

THE ^{152. a}
C A S E

O F
Not taking the Oaths,
A N D
C O N V I C T I O N

Thereupon, as of
P O P I S H R E C U S A N C Y,
Fully S T A T E D;
I N A
P R O S E C U T I O N

Brought in
Doctors - Commons,
B Y
Doctor S H I P P E N,
A G A I N S T
Doctor W E L T O N,
R E C T O R of *White-Chapel.*

Illustrated with
A N N O T A T I O N S.

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T H E
P R E F A C E.

A *CASE* of so great a *Weight*, and *Moment*, as this is, will be undoubtedly worthy of *Perusal*: A *Case*! in which the *Rights* and tenderest *Concerns* both of the *Clergy* and *Laity* are at *Stake*; as it relates to the *Removal* of a Person both from his *Ecclesiastical Preferment*, and from his *Freehold*; which makes it *not only* the *Precedent* of a *particular*, but of a *publick Nature*, and, consequently, to claim the *Notice*

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of every *Subject*, who has a *native Right* to the *Protection*, and *Privilege* of the *Laws* of his *Country*.

Upon this *Subject*, it will be attempted, in the following *Essay*, to demonstrate wherein the *Laws* are *coercive* and *penal*, and wherein *favourable*, as to the *Case* in Hand.

The *Laws*, in general, are a SAFEGUARD to the *Community* of *Human Kind*; and every one has an *inherent*, an *innate* PRIVILEGE, as a *free-born* Member of that *social OEconomy*, to make Use of that *Armour*, and those *Weapons*, which the *Laws* afford, *offensively*, or *defensively*, (as shall best suit his Purpose) to resist *Injustice*, or to *defend* himself against its *Violences*.

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And thus, according to the golden Rule of *Reason*, on which the Establishment of wholesome *Laws* is founded, no Man can *do* or *suffer* any Injury, can *oppress*, or be *oppress'd*: For the BALANCE of unerring JUSTICE ought always to turn where the *weightiest Arguments* fill the SCALE.

Every Person has equally a Right to claim *Protection*, so far as the *Munitions* of the Laws have provided, from the *Violence* of his *Adversary*, as well as to demand *Enforcement* from the *Strength* and *Rigour* of 'em (as Occasion may require) against his *Antagonist*: Therefore, in the following *Treatise* Use will be made of *both*, of *Armour offensive* and *defensive*;

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since the Laws have furnish'd
suitable Materials.

It will require the most prudent *Caution*, and *Conduct*, to quadrate the just Zeal, and Courage, (which are due from every Member of a Community, in *Vindication* of the common *Rights* and *Liberties*) with that *Deference* and *Submission* he owes to the Legislative Powers, especially, when he is under a Necessity, to engage where an *Act of Parliament* is brought into the Debate.

But such is the *Justice* of the *Laws*, that every Subject has a Liberty to make his best *Defence* under their Shelter; and none shall be *traduc'd* into the *Construction* of a penal Law, but such as become liable
under

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under the *very* Words and *literal* Sense of it : And no Man is to be *interpreted* under the *Cognizance*, and *Punishment* thereof, by bare *Surmise* ; but according to the *plainest*, *genuine* *Meaning* of the Words therein.

And if a *Deficiency* can be made appear in any particular Clause of a Law, wherein the *Intention* of that Clause is not *fully* *comprehensive* and *express*, the Force of it is weaken'd and *invalidate* ; and whatever the *Intention* of it might be, 'tis *void*, and *null*, in Course, as a *Non-Apparent*.

And in this Case, the Subject ought to be indulg'd the *Benefit* of laying hold on any Branch, to avoid sinking under the Penalty, which otherwise would be *unjustly* in-

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fllicted for a *presumptive* Offence, and a Person thereby judg'd *guilty* without a Law ; which is contrary to *Reason*, and *Justice*, Laws *Divine*, and *Human*.

And this must be the Consequence, where the *Rigour* of a Law takes Place by *straining* of Constructions upon it, otherwise, and in a *different* Manner than what the very Law it self, in its *own* Words, speaks and prescribes : This would be *summa Injuria* (indeed) to stretch *Explanations* beyond the Words of the *Summum Jus*.

And, besides, the *dead Letter* of the Law has no *Strength* nor *Operation*, until it is interpreted into *Being* by the *proper* Magistrate, or Judge, who finding it, upon due *Proceedings*, applicable to the *Case* before him, gives

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gives it an *Impulse*, and *Force*, by his *Declaratory Sentence* : So that no Man can *forfeit*, or have any *Punishment* inflicted on him, under a *Law*, until he be *judicially adjudg'd*, and *pronounc'd* GUILTY of the *Breach* of such *Law*.

And in a Case, where a Person is to be affected as an *Ecclésiastick*, we recur to the Learning of the *Canon Law* for a *Decision* ; and where the Point of *Right*, of *Property*, and *Possession* is in Dispute, the Strength, and Aid of the *Common Law* is at Hand to *assist* ; and sometimes, upon Occasion, in both Cases, we must have, also, Recourse to the *Statute Laws*.

The Canon Law, which is twofold, partly *Foreign* and partly *Domestick*, contains divers

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verse eminent Privileges and Provisions for Security of the *Ecclesiastical Polity*, and for the preserving, and establishing of the *Rights*, and *Immunities* of the *Church and Clergy*.

The Branch of this Ecclesiastical Legislature, which is call'd *Foreign*, consists of the ancient Canons, Councils, Decretals, &c. which we commonly call the *Body of the Canon Law*; and this is hitherto held, and esteem'd as containing authentick Fundamentals of our *Ecclesiastical-Judicial-Œconomy*, in whatsoever is not contrariant, or repugnant to the *Laws, Statutes, Customs, and Prerogative Royal*.

The *Domeſtick Ecclesiastical Laws*, are the *Constitutions Provincial*, publish'd by divers *Arch-Bishops*

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Bishops of the Province of *Can-*
terbury, from *Stephen Langton*
to *Henry Chicheley*; as also the
Constitutions publish'd by *Otho*
and *Othobon*, and these digested
under Heads, methodically, and
after the Manner of the *Decre-*
tals, and learnedly illustrated
by the valuable Commentary
of *Lyndewode*, our celebrated
English Canonist, are in like
Manner a Part of the Laws *Ec-*
clesiastical; and our modern
Canons make up a farther Part 1603.
of the Rules of our Ecclesiasti-
cal *Judicature*. And, in every
Man's Case, all just *Advantages*
are to be taken, and made Use
of, as the *Civil, Canon, Common,*
or *Statute Laws*, or either of
them, administer opportunely
Relevant to the Point litigated.

Hereupon,

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Hereupon, it will be consider'd, in the following *Discourse*, under what Law, or Laws this Business is properly *cognizable*; and from thence to draw such Matter as may be to the *Purpose*, which must be supply'd from the *Fountains* of the *Civil*, the *Canon*, or *Ecclesiastical*, *Statute*, and *Common Laws*, they all *concurring* in their several Capacities, to assist in the present *Affair*.

It will be therefore Time to present you with the CASE it self, interspers'd with various *Observations* occurring throughout the whole *Series* of it; whereby the Matter of Fact is set in a clear Light, and, occasionally, *Right of Patronage*, *Presentation*, *Institution*, and *Induction*,

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duction, Title of Freehold, Ple-
nary, Resignation, Deprivation,
Conviction, Voidance, Lapse, Su-
per-Institution, Prohibition, Er-
rors and Nullities, Sacrilege, Spi-
ritual Adultery, Intrusion, and U-
surpation, and other Circumstan-
ces are accounted for, and ex-
plain'd.

——— *Si quid novisti rectius istis,
Candidus imperti; si non, his utere—*



THE



THE
CASE
OF
Dr. *WELTON*.

THE Matter of Fact is thus;
Doctor *Welton*, Rector of
the Rectory and Parish-
Church of St. *Mary Mat-*
fellow, *alias*, *White-Chapel*, in the
County of *Middlesex*, was, in the
Year 1697, presented, by the lawful
Patron, to that Living, then be-
B come

1697.

come vacant, by the Death of Dr. *Payn*, the late Incumbent; and, thereupon, receiv'd Institution, and Induction, and has, ever since, continu'd Rector there: He is also Vicar of the Vicaridge of *East-Ham* in the County of *Essex*, where he resides.

715, In *September* and *October* 1715,
 tember Doctor *Welton* was oblig'd to be in
 and the Country, near an hundred Miles
 7ober. from Home; whereupon, some Persons, having sinister Views against him, laid hold of that Opportunity, and procur'd him to be summon'd to appear at the Quarter-Sessions in *Essex*, to take the Oaths there; which was done in the following Manner.

ember Two Justices of the Peace for the
 1715, County of *Essex*, (*quorum unus*) issued a Summons in Writing, under their Hands and Seals, to *Richard*
 ch pen'd *Welton*, D. D. Vicar of *Eastham*, in
 t 7sday. the same County, requiring his personal Appearance before them, on
 vday, the first Day of *October* then following, by Ten of the Clock in the
 ber 1, Forenoon, to take the Oaths appointed by the Act 1 Reg. nunc, intitled
 '15.

titled, *An Act for the farther Security of his Majesty's Person and Government, and the Succession of the Crown, &c.*

Such Summons was left at Do-^{Fri}
ctor *Welton's* House, with his ^{Sept.}
Wife, he, then, being many Miles ¹⁷¹
distant from *East-Ham*.

Randolph Faint, one of the Con-^{Satur}
stables of the Parish of *Low Layton*, ^{Octoi}
in the County of *Essex*, made Oath ¹⁷¹
before the above-mention'd Justices,
that on *Friday*, the 30th of *Septem-*
ber, (which was the Day before) in
the Forenoon, he left the said Sum-
mons at the Dwelling-House of the
said Doctor *Welton*, in the Parish of
East-Ham, with the Wife of the
said Doctor; [as by the Return of
the said Justices, in the Certification
by the Clerk of the Peace for the
County of *Essex*, appears.]

On the *Wednesday* following, the ^{Wedn}
Week after the Feast of Saint *Mi-*
chael the Archangel, at a General ^{5, 1}
Quarter-Sessions of the Peace, hold-
en for the said County of *Essex*, at

Chelmsford, by *Adjournment*, all the Steps so made are certify'd; and that Doctor *Welton* did neglect, or refuse, to appear, &c. which Matters are so certify'd by the Clerk of the Peace, as in the following Copy of such Certificate appears.

ff. **E**GO Samuel Reynolds, *Armiger, Clericus Pacis Com' Essex' prædict' Virtute cujusdam Actus Parliamenti, fact' apud Westm' in Com' Midd', Anno Regni Domini nostri Georgii, Dei gratiâ nunc Regis Magnæ Britannicæ, &c. primo, intitulat' An Act for the farther Security of his Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the Hopes of the pretended Prince of Wales, and his open and secret Abettors, Serenissimo Domino Regi, in Cur' ipsius Domini Regis, coram ipso Rege apud Westm' in Com' Midd' præd' humilimè certifico, Quod ad General' Quarterial' Session' Pacis dicti Domini Regis tent' pro Com' Essex' præd' apud*

apud Chelmsford in Com' Essex'
præd' per Adjournament' Die Mer-
curii in Septimanâ prox' post Festum
Sancti Michaelis Archang' scilicet
quinto Die Octobris, Anno Regni di-
cti Domini Regis secundo, coram
Nathaniel Meade, Milite, scrivien'
ad Legem, Samuele——, Johan-
ne Tryon, Baronetto, Francisco
Gardiner, Josepho Williamson, Wil-
liamo Fitch, Ar', & aliis Sociis suis
Justic' dicti Domini Regis ad Pacem
in Com. Essex' præd' conservand' Pa-
cem ad divers' Felon' transgr' & al'
Malefacta in eodem Comitatu perpe-
trat' audiend' & terminand' assign'
Fisher Tench, Baronet' & Robertus
Dennet, Ar' duo Justiciar' dicti
Domini Regis ad Pacem in Com. Es-
ssex' præd' conservand' assign' certi-
ficaver' in eandem General' Quarte-
rial' Session' Pacis, tent' per Adjour-
nement, ut præfertur sub Manibus &
Sigillis suis prout sequitur, Essex, sci-
licet; We, Sir Fisher Tench, Bart.
and Robert Denner, Esq; two of his
Majesty's Justices of the Peace for
the said County of Essex, (quorum
unus) do hereby certify, That on

the 29th Day of *September* last we did issue out a Summons, in Writing, under our Hands and Seals, directed to Dr. *Richard Welton*, Vicar of *East-Ham* in the said County of *Essex*, thereby requiring him personally to be and appear before us the said Justices, at the *Angel Inn* in *Great Ilford*, in the County aforesaid, this Day, being the 1st Day of *October*, by Ten of the Clock in the Forenoon, then and thereto take the Oaths express'd and appointed to be taken, in and by an Act of Parliament made in the first Year of the Reign of his Majesty King *George*, intituled, *An Act for the farther Security of his Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for extinguishing the Hopes of the pretended Prince of Wales, and his open and secret Abettors*. And we the said Justices do farther certify, That on the said 1st Day of *October*, *Randolph Faint*, one of the Constables of the Parish of *Low-Layton* in the said County, did
appear

appear before us at the *Angel-Inn* in *Great Ilford* aforesaid, and made Oath, that on *Friday* the 30th Day of *September* last, in the Forenoon, he left the Summons abovemention'd at the Dwelling-House of the said *Dr. Richard Welton*, in the Parish of *East-Ham* aforesaid, with the Wife of the said Doctor *Richard Welton*. And, lastly, we do certify, that the said Doctor *Richard Welton* did neglect or refuse to appear before us, to take the said Oaths, at such Time and Place as is abovemention'd.

Given under our Hands and Seals
the said 1st Day of *October*, Anno
Domini, 1715.

Fisb' Tench,
Robert Dennet.

Quæ quidem Certificatio intr' super Rotulos ejusdem Session'. Et ulterius certifico, Quod Nomen prædict' Richardi Welton in Certificat' præd' mentionat' ad præd' General' Quar- terial' Session' Pacis, sic ut præfertur tent' per Adjourn' dicto quinto Die Octobris, Anno supradictò, apud

Chelmsford *præd'*, publicè lect' fuit ;
 & quod idem Richardus Welton ad
 General' Quarterial' Session' Pacis
præd' præstare sacramenta *præd'* neg-
 lexit.

These Practices against Dr. *Wel-*
ton, founded upon the unjust Advan-
 tage taken in his Absence, by a pe-
 remptory Summons for him to ap-
 pear personally, within *twenty four*
Hours, before two Justices of the Peace,
 in *Essex*, at a Time when he was *so*
many Miles distant from thence, car-
 ry the Fate with them, that is the
 general Consequence of such a *Pre-*
cipitancy as has been hurry'd on a-
 gainst him, which will appear by
 the many Absurdities and Errors
 blunder'd in by such *Over-hastiness*,
 throughout the Certification of the
 Clerk of the Peace, rendering the
whole irregular, null, and void, e-
 ven according to the Tenor of the
Act it self, as shall be more parti-
 cularly remark'd by and by.

Notwithstanding which, upon
 the Notion of these Proceedings,
 (howsoever irregular) Doctor *Ship-*
pen procur'd a pretended Presentati-
 on

on from one Dr. *Freeman*, and one *March* 3
Thomas Meare, wherein they call 1715.
 themselves the true and undoubted
 Patrons of the Rectory of *White-
 Chapel*, and as such, thereby, pre-
 sent Doctor *Shippen* to that Rectory,
 which, they say therein, is void, by
 the *Amotion*, as they call it, or Re-
 moval, (which the Law calls *Depri-
 vation*, and which is not yet) of
 Doctor *Welton*; and, thereupon,
 desire that Doctor *Shippen* may
 be accordingly admitted, institu-
 ted, and canonically vested, or in-
 ducted into that Living, with all
 its Rights, Members, and Appurte-
 nances, as Rector thereof; as ap-
 pears by the following Copy, ex-
 tracted out of the *Registry of Lon-
 don*.

Reverendo in Christo Patri & Do-
 mino, Domino Johanni, Permissione
 Divinâ Londinenſi Episcopo veſtrove,
 * in Spiritualibus generali, aut alii
 cuicunque hanc noſtram Præſentatio-
 nem

* Here the Word *Vicario* is omitted.

nem || habenti vel habituro, Nos Georgius Freeman de Steeple-Aston in Comitatu Oxoniæ Sacræ Theologiæ Professor, & Thomas Meare, nuper de Collegio Ænei-Nasi in Universitate Oxon' Artium Magister, & nunc Rector de Parochiâ de Cottingham in Com' North'toniæ, veri & indubitati Patroni Rectoriæ de White-Chapel in Com' Midd' vestræ Diœces'; omnimodam Reverentiam & Obedientiam tanto Reverendo Patri debitam & condignam, ad dictam Rectoriam de White-Chapel prædict' per Amotionem Richardi Welton, Clerici, ultimi incumbentis in eadem, jam legitimè vacantem, & ad nostram Præsentationem, pro hac vice, pleno jure, spectantem, dilectum Nobis in Christo Robertum Shippen, Sacræ Theologiæ Profesorem, vestræ Reverendæ Paternitati harum serie præsentamus, humiliter rogantes, quatenus eundem Robertum Shippen ad dictam Rectoriam admittere, ipsumque Rectorem ejusdem, ac in & de eadem instituere Canonice,

|| It ought to be admittendi Potestatem habenti.

è, & investire, tum suis Juribus,
Membris, & Pertinentiis universis,
lateraque omnia, & singula alia per-
gere & perimplere, quæ vestro in
 hac parte incumbunt Officio Pastoralis
 elitis cum Favore & Effectu. In
ujus Rei Testimonium, Sigilla no-
ra Præsentibus apposuimus, dat' ter-
io Die Martii, Anno Domini 1715.

George Freeman, Tho. Meare:
Signat' sigillat' & deliberat'
per infranominat' Georgi-
um Freeman, in Præsentia
John Hyde, Martha Hyde;
Signat' sigillat' & deliberat'
per Thomam Meare, in Præ-
sentia Tho' Bedingfield, Sa-
muel Meare.

Hereupon a * Caveat was enter'd, *Mar. 21,*
in the Registry of the Consistory- *1715-16.*
Court of London, against granting
institution to the Rectory and Pa-
rish Church of St. Mary Matfellow,
aliàs, White-Chapel, in the County
of Middlesex, for the Interest of Dr.
Welton, as Incumbent.

Here

* Ne Fiat, &c.

Here it is to be observ'd, that though a Caveat is necessary to be enter'd in the Ecclesiastical Courts, when there are contending Parties, founded on equal Pretence of Interest or Title, and the one is apprehensive lest a Surprize or Advantage might be taken against him, by the other's obtaining a Decree to pass, *ex parte*, without his being heard to object, and suggest his Pretence and Right in due Form of Law; yet in a Case notorious to the Judge, as the Fullness of a Living is suppos'd to be to the Bishop, his being affected with the Privy thereof in his own Breast, should seem to be a sufficient Caution to stop his Hands from acting any Thing in Prejudice to the known or presumptive Right of a Person, *parte inauditâ*. And more especially, where a Bishop has said (as he does by his Institution) to a Clerk who is presented to a Benefice, * *I appoint thee Spiritual Gover-*

* *Instituo te Rectorem talis Ecclesiæ, cum Cura animarum, & accipe Curam tuam & meam. Covell. Interp. Verb. Institutio.*

Governor of this Church, with the
 Sure of Souls ; take therefore not on-
 ly thy Care, but also mine upon thee.
 And by the very * Mandate which
 the Bishop issues forth, under his
 Seal, and directs to the Arch-dea-
 con, to induct the Clerk presented
 to a Living, his exprefs Direction
 and Command is, to defend by his
 Episcopal Authority the Person,
 when inducted, in his Right of Pos-
 session.

A Bishop, therefore, according to
 the Canon Law, and Proceedings of
 the Ecclesiastical Courts, is not to do
 any prejudicial Act, to the Detri-
 ment of the Right and Possession of
 a Person *duly instituted and inducted*,
 without first regularly citing such
 Person, by a *Process*, to appear, and
 shew Cause why such and such Pro-
 ceedings, intended against him,
 should

* Vobis igitur conjunctim & divisim com-
 mittimus, ac firmiter injungendo mandamus,
 quatenus eundem W. in realem, actualem, &
 corporalem Possessionem ipsius Rectoriæ, de,
 &c. Juriumque & Pertinentium suorum uni-
 versorum inducat is inducive faciatis, & de-
 fendatis Inductum.

should not be had and done ; where-
by he may have the Liberty and
Opportunity of *defending his own
Right and Title*, and, in that, *the
Right and Title of the Bishop him-
self*, by the Sanction of whose Au-
thority he is vested in Possession;
and which Authority, by defend-
ing such Possession, he *supports and
justifies*.

However, the Caveat was enter'd,
in majorem cautelam, to prevent any
Thing being done by Surprise,
from which a Party could have no
Redress, but by Way of Appeal.
This Caveat was afterwards warn'd,
viz. on *Friday* the 20th of *April*,
and not till Six of the Clock in the
Evening, to appear the very next
Day, by one *Rouse*, employ'd
by *Dr. Shippen*; who, the 21st of
April 1716, * *allegd*'d, in an Act of Court, That
the

* *Rouse* allegavit, dictam Ecclesiam de
*White-Chapel vacuam esse de Persona Richardi
Welton*; & in Subsidiū Allegationis suæ, ex-
hibuit *Certificatorium*, ex Officio Coronæ ex-
tractum, & allegavit partem suam esse debite
præsentat' ad dictam Rectoriam, & aliàs ex-
hibuisse Præsentationem suam coram Domino
Epis-

the Church of *White-Chapel* was void of the Person of *Dr. Welton*; and, as a subsidiary or assistant Proof thereof, said, he exhibited (which he then did not) a Certificate, extracted out of the *Crown-Office*; and farther allעדg'd, *Dr. Skippen* was duly presented to the Rectory of *White-Chapel*, and had antecedently exhibited his Presentation before the Bishop of *London*, and offer'd himself ready to subscribe the Articles, and TAKE THE OATHS, and do whatever else might be necessary on that Occasion, in order for his having Institution: But that *Dr. Welton* had enter'd a Caveat against it: Wherefore he pray'd that Caveat might be superseded, and Institution granted to *Dr. Skippen*.

Here-

Episcopo *London*' & obtulisse se promptum & paratum ad subscribend' Articulos, & ad præstand' Juramenta, & cætera faciend' in similibus necessaria, in ordine ad Institutionem suam ad Rectorem de *White-Chapel* prædict'; dictum verò *Richardum Welton* interposuisse Cautionem contra Institutionem suam ad Rectorem prædict'; Quare petiit dictam Cautionem amoveri & supersedi, necnon Institutionem, &c. parti suæ concedi.

Hereupon * Mr. *Oughton* appear'd, under Protestation, for Dr. *Welton*, and alledg'd, in the same Act of Court, That Dr. *Welton* was presented to that very Rectory and Parish-Church (lawfully vacant, at such Time, by the Death of Doctor *Payn*) by the true and undoubted Patron; and, by the then Bishop, admitted, instituted, inducted, and put into real, actual, and corporal Possession thereof, together with all its Rights, Members, and Appurtenances; and that Dr. *Welton* still remains in such Possession.

And

* *Oughton*, sub Protestatione, &c. allegavit, Reverendum *Richardum Welton* fuisse & esse ad dictam Rectoriā & Ecclesiam Parochialem *Sæ Mariæ Marfellon*, alias *White-Chapel* per verum & indubitatum Patronum, tunc temporis, per mortem Reverendi Viri *Gulielmi Payn*, sacre Theologiæ Professoris, ultimi Incumbentis ibidem, legitime vacantem, præsentatum, & ad & in eadem per illius loci Ordinarium admissum & institutum, ac in realem, actualem, & corporalem ejusdem Possessionem, cum suis Juribus, Membris, & Pertinentiis universis debite inductum, & adhuc in Possessione ejusdem, cum suis Juribus, Membris, & Pertinentiis universis fuisse & esse.

And || Mr. *Oughton* farther urg'd, That he was warn'd by Dr. *Shippen's* Side, but at fix of the Clock the preceding Day, to appear as on this Day (tho' no Court-Day, and within an incompetent Time) to the Caveat he had enter'd for Doctor *Welton* in the *Registry*; and that Dr. *Welton* was then absent in the Country, at a considerable Distance; and mov'd for Time to consult and advise with him hereupon.

Upon which *Rouse* declar'd himself a Dissenter, and insisted, no less than three Times, for *Institution*, and, as many Times, for his *Crown-Office*

C

Certi-

|| Et *Oughton* ulterius allegavit se monitum fuisse horâ sextâ hesterni diei, ad comparandum hoc die, (minùs juridico, & infra tempus omnino incompetens) ad instantiam Partis *Rouse*, ratione Cautionis per eum in Registro hujus Curiae interpositæ, & allegavit Partem suam esse modo in partibus abhinc remotis, & petiit tempus ulterius indulgeri, quò melius consuleret Partem suam, dicto *Rouse* dissentiente, & primo, secundo, & tertio petente, ut prius, & Certificatorium prædictum primo, secundo, & tertio admitti. Unde Dominus assignavit ad audiendum voluntatem suam super hinc inde petitis in proximum.

14y 15,
1716. Certificate to be admitted, notwithstanding no such pretended Certificate was then in Court, (tho' said to be then exhibited) nor was it, in Truth, brought in 'till above three Weeks after.

So the Judge appointed to hear the Arguments on both Sides upon the next Court-Day.

Upon the *third Session of *Easter* Term following, it was alleg'd on both Sides as before; and farther on Behalf of Dr. *Welton*, That this Cause

* 3^a. *Sessione Terminis Paschæ, 7^o Maii, 1716.*

Allegatum & petitum fuit ut prius. *Oughton* allegavit hanc Causam esse de Jure Beneficii, ideoque maxime favorabilem; quare petiit *Rouse* arctandum fore ad proponendum quasunque materias pro Parte sua, in debita Juris forma articulatim, in allegatione in Scriptis concipienda, & copiam ejusdem & exhibitorum eidem annexendorum sibi per *Rouse* tradendam & deliberandam fore juxta Stylum & Praxin hujus Curie, & procedendum fore plenarie decerni, & Juris Beneficium in omnibus Parti suæ salvum esse & ministrari cum effectu.

Unde Dominus assignavit ad audiendum ejus voluntatem super hinc-inde peritis in proximum.

Cause was an Affair concerning the *Right of Benefice*, and, as such, of a favourable Nature: And it was mov'd, that the other Side might be oblig'd to propound whatever Facts they had to plead, in due Form of Law, by an Allegation in Writing; and that Mr. *Oughton* might have a Copy of it, and of such Exhibits as might be thereunto annex'd, according to the Style and Practice of the Court; and that it might be proceeded plenarily in the Cause; and that Dr. *Welton* might be allow'd the Benefit of the Laws in every Respect. And the Chancellor appointed to hear the Arguments on both Sides the next Court Day.

Upon the * 4th Session of *Easter Term*, *Rouse* left the pretended Certificate

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tificate

* 4a. *Sessione Terminum Pasche*, 15 Maii, 1716.

Rouse penes Registrum reliquit Certificatorium ab Officio Coronæ; Dominus assignavit *Rouse* ad dimittendum Præsentationem Partis suæ in Registrum, & assignavit *Oughton* ad ostendendum Causam, si quam, &c. quare Dr. *Shippen* ad Rectoriam Sanctæ *Mariæ*

tificate from the *Crown-Office*, in the *Registry* ; and the Court order'd him to leave his Client's Presentation there also, and assign'd *Oughton* to shew Cause why *Dr. Shippen* should not be instituted ; who thereupon gave an Allegation in Writing, on Behalf of *Dr. Welton*, as to the Admission of which, the Chancellor appointed to hear his Opinion on the next Court-Day.

Upon the *second Session of *Trinity* Term, when the Cause stood upon the Admission of *Dr. Welton's* Allegation, Occasion was given (on Account of the pretended Presentation of *Dr. Shippen*, lodg'd in the *Registry* but a Day or two before) to give addi-

ria Whitechappel institui non debeat. *Oughton* dedit Allegationem in Scriptis, ad audiendum voluntatem Domini super Admissionem in proximum.

* 2^a Sessione Terminis Trinitatis, 12^o Junii 1716.

Super Admissionem Allegationis Oughton.

Oughton dedit Articulos adicionales, & Dominus ad Petitionem *Oughton* assignavit ad audiendum Voluntatem super Admissionem Allegationis & Articulorum additionalium in proximum.

additional Articles on Behalf of Dr. *Welton*, relating to such pretended Presentation, to shew the Nullity and Absurdities of it; and the Admission of such Allegation of Doctor *Welton*, and the additional Articles thereto, were appointed to be heard upon the following Court-Day.

Now we are come so far in the Steps of Proceedings, and are speaking of the Plea or Allegation, and additional Articles, it will be proper, in Course, to set forth the very Allegation, and additional Articles exhibited in the Cause, and pray'd to be admitted on the Part and Behalf of Dr. *Welton*, which are as follows,

The ALLEGATION.

Quartâ Sessione Termini Paschæ, 1716.

*r. Shippen contra D'rem Welton } Quo die
 puse Oughton } Oughton, no-
 mine Procuratorio ac ut Procura-
 tor legitimus, dicti Reverendi Viri
 Richardi Welton, Sacræ Theolo-
 giæ Professoris, omni meliori
 viâ, modo, & Juris formâ;
 necnon ad omnem quemcunq; Ju-
 ris effectum (exinde quovismodo
 sequi valen') dixit, allegavit,
 & (in his Scriptis) in Jure
 proposuit, articulatim; prout
 sequitur, viz.*

- I. *Imprimis, That the Reverend Ri-
 chard Welton, Doctor in Divinity,
 being in Holy Orders, (of Deacon
 and Priest) was rightly and duly
 presented (in or about the Month of
 March, in the Year of our Lord
 1697) by Mr. Nicholas,
 the (then and present) true and
 undoubted Patron of the Rectory of
 the*

the Parish-Church of St. *Mary Matfellow*, (aliàs *White-Chapel*) in the County of *Middlesex*, and Diocess of *London*, to the Rectory of the Parish-Church of St. *Mary Matfellow* (aliàs *White-Chapel*) aforesaid, then vacant by the Death of the late Reverend *William Payne*, Doctor in Divinity, the then last immediate Incumbent there) together with all and singular the Rights, Members, and Appurtenances thereof. *Ponit tamen de quolibet alio tempore. Et ponit Pars ista proponens, conj'm, div'm, & de quolibet.*

Item, That the said Dr. *Richard Welton*, soon after the said Presentation (in the precedent Article mention'd) legally had and made, (as aforesaid) and in Pursuance thereof, was (by the Authority of the Right Reverend Father in God, *Henry*, then Lord Bishop of *London*) duly and canonically admitted, instituted, invested, and inducted into the Rectory of the Parish and Parish-Church of St. *Mary Matfellow* (aliàs *White-Chapel*) aforesaid; together

II

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with

with all and singular the Rights, Members, and Appurtenances thereof; and put into the real, actual, and corporal Possession of the same. *Ponit tamen de quolibet alio tempore, &c. Et ponit ut supra.*

II. *Item*, That the said Dr. *Richard Welton* hath read the Thirty Nine Articles, and declar'd his Assent and Consent thereto, and to the *Book of Liturgy*, or *Uniformity of the Common Prayer*, (in Manner as by Law requir'd) and *both* done and perform'd *all other* Matters and Things whatsoever (which by Law he ought to do) to qualify and enable him *to be* compleat Parson, Incumbent, and Rector of the said Rectory of the Parish and Parish-Church of St. *Mary Matfellow* (aliàs *White-Chapel*) afore said. And this was, and is, true, publick, and notorious. *Et ponit ut supra.*

V. *Item*, That the said Dr. *Richard Welton* is, and for the Space of nineteen Years last past, or thereabouts, hath been the lawful and undoubted Parson,

Parson, Incumbent, and Rector of the said Rectory of the Parish and Parish-Church of St. *Mary Matfellow*, aliàs *White-Chapel*, and hath hitherto, as he ought, peaceably and quietly held, possess'd, and enjoy'd the same. And the said Rectory, or Living, is not vacant, but now full by his Incumbency therein. And this was and is true, publick, and notorious. *Ponit tamen de quolibet alio temporis spatio, &c. Et ponit ut supra.*

Item, That the said Dr. *Richard Welton*, being legally instituted and inducted into the said Rectory of the Parish and Parish-Church of St. *Mary Matfellow*, aliàs *White-Chapel*, as in the second precedent Article of this Allegation is mention'd and set forth, hath thereby not only had and obtain'd the Cure of Souls within the said Parish; but is also thereby intitled to the Freehold of the said Parish-Church, and to the Tythes, Manse, Glebe, and other Profits and Perquisites thereunto belonging. And having had and been
in

V.

in peaceable and quiet Possession of his said Living, Rectory, and Freehold, for the Term of Years in the fourth precedent Article of this Allegation mention'd, ought not to be disturb'd, amov'd, or disseiz'd of his said Living, Rectory, and Freehold, unless legally depriv'd, according to the Laws, Customs, and Constitutions of this Realm, but ought to hold and enjoy the same during the Term of his natural Life. *Et ponit ut supra.*

VI. *Item,* That the said Doctor *William Shippen*, by seeking and endeavouring to obtain Institution and Induction into the said Church of *White-Chapel* aforelaid, seeks and endeavours to deprive and amove the said Doctor *Richard Welton* of and from his said Rectory, Living, and Freehold, and of the Tythes, Manse, Glebe, and other Perquisites and Profits thereunto belonging, and the Cure of Souls in the said Parish. *Et ponit ut supra,*

Item,

Item, That the said Dr. Richard VII. *Welton* is a pious, able, learned, orthodox, and eminent Divine of the Church of *England*; and in the Discharge of his Priestly Function and Duty, and his edifying Conversation amongst his Parishioners and Flock, has justly engag'd their Respect and Esteem; and for and as a Person of the Character mention'd, the said Doctor *Welton* was and is commonly accounted, reputed, and taken to be. *Et ponit ut supra.*

Item, That the said Dr. Richard VIII. *Welton* hath not at any Time been guilty of any Crime, Misdemeanor, or Fault, whereby to have incurr'd or to incur any Ecclesiastical Censure or Canonical Punishment of Deprivation or Amotion, nor has made any Cession or Resignation of his said Living or Rectory of *White-Chapel* aforesaid. And this was and is true, publick, and notorious. *Et ponit ut supra.*

Item, Whereas a Copy of a pretended Writing has been exhibited IX
in

in this Cause, pretended to be a Copy of a pretended Certificate of a pretended Conviction, the same is a private Writing, and ought not by Law to be admitted. And in Case the same did relate to Dr. *Richard Welton*, Party in this Cause, (*Quod non fatetur Pars ista proponens, &c.*) such pretended Certificate of Conviction was unduly and illegally obtain'd and made, and is in it self irregular, illegal, null, and of none Effect, at least sufficient in Law, as the Party proponent is advis'd, to found a Deprivation or Amotion upon; and the said Certificate is not authentick, nor are the Contents thereof true. *Et ponit ut supra.*

- X. *Item*, That in Case the said Doctor *William Shippen* hath, as is pretended, obtain'd any pretended Presentation to the said Living or Rectory of *White-Chapel* aforesaid, the same is unduly obtain'd and made, and in it self null and void, being so obtain'd, before the said Living (not becoming void by Death, Cession, or Resignation) is actually declared,

clar'd, by legal Process, Proceedings, and Proofs, to be vacant. And farther, for that the Person or Persons pretending to make such Presentation, is not, nor are the rightful, lawful, and undoubted Patron or Patrons thereof: And that the pretended Grounds upon which the said pretended Presentation is founded and granted, are fictitious, and such as by Law ought not to be admitted, as will appear by the said pretended Presentation when produc'd, and the Party proponent has Liberty to object to the same, which he prays may be exhibited according to Order of this Court. *Et ponit ut supra.*

Item, Quod premissa omnia & singula fuerunt, & sunt vera, publica, manifesta, pariter ac famosa, ac de & super eisdem laborarunt & in presenti laborant publica Vox & Fama. Unde actâ fide, &c. XI.

The Additional ARTICLES
on Behalf of Dr. Welton.

Dr. Shippen contra D^rem Welton } Articuli Ad-
Rouse Oughton } ditionales
ex Parte Reverendi Viri
Richardi Welton, Sacra
Theologiae Professoris.

- I. *Item*, Whereas George Freeman of Steeple-Aston in the County of Oxford, Doctor in Divinity, and Thomas Meare late of Brazen-Nose College in the University of Oxford Master of Arts, and now Rector of the Parish of Cottingham in the County of North^ton, mention'd in the pretended Presentation exhibited in this Cause on the Part and Behalf of the said Dr. Shippen, and therein and thereby set forth and styl'd to be the true and undoubted Patrons of the Rectory of White-Chapel in the County of Middlesex, the same was and is therein and thereby falsely set forth and suggested; for that, *in rei veritate*, the
- fa

said *George Freeman* and *Thomas Meare* are not the true and undoubted Patrons of the Rectory of *White-Chapel* aforesaid. *Hocq; fuit & est verum, &c. Et ponit Pars ista proponens conj'm, div'm, & de quolibet.*

Item, Whereas it is mention'd, II.
set forth, and insinuated, in the said pretended Presentation, exhibited in this Cause on the Part and Behalf of the said Doctor *Shippen*, dated the third Day of *March* 1715, last past, that the said Rectory of *White-Chapel* aforesaid, was then lawfully vacant by the Amotion of *Richard Welton*, Clerk, the late Incumbent therein, the same was and is falsely suggested, set forth, and insinuated therein; for that, *in rei veritate*, the said *Richard Welton*, Clerk, in the said pretended Presentation mention'd, and the Reverend *Richard Welton*, Doctor in Divinity, now living, and the Party in this Cause, was and is one and the same Person, and not divers; and that no Cause or Prosecution whatsoever had been brought or instituted before the
Date

Date of the said pretended Presentation, whereby the said Dr. *Welton* was, before, or at the Time of the Date of the said pretended Presentation, pronounc'd, adjudg'd, sentenc'd, or decree'd, in any Ecclesiastical Court, to be depriv'd, suspended, or amov'd from the said Rectory of *White-Chapel* aforesaid: Nor is he in Fact hitherto legally depriv'd, suspended, or amov'd from the same by the Laws, Canons, and Constitutions of this Realm, nor ought to be, but by Sentence and judicial Privation first regularly obtain'd in the Ecclesiastical Court. And this was and is true, publick, and notorious. *Ponit tamen, &c. Et ponit ut supra.*

- III. *Item,* That the said pretended Presentation exhibited in this Cause on the Part and Behalf of the said Dr. *Shippen*, by the many Errors, Rasures, Interlineations, and Obliterations, appearing in and throughout the same, especially in the more essential Parts thereof, is and doth appear to be suspicious, fraudulent, and

and falsarious, and is not an authentic Instrument, carrying full Faith, nor such as ought by Law to be admitted; nor are the Contents thereof true. *Et ponit ut supra.*

Item, That whereas it was and is alleg'd on the Part and Behalf of the said Doctor *Shippen*, in this Cause, that the said Doctor *Shippen* is duly presented to the said Rectory of *White-Chapel* aforesaid, and thereupon Institution and Induction is pray'd; and whereas this Suit is commenc'd *ad Instantiam Partis*, to wit, at the Instance of the said Doctor *Shippen*; and whereas the said Doctor *Welton*, the Party proponent, doth deny and oppose the pretended Right of the said pretended Patronage, and the pretended Interest of the said Doctor *Shippen* under the same, and the Validity of the said pretended Instrument of Presentation, and the Truth of the Contents thereof; the said Doctor *Welton*, the Party proponent, prays, That the said Doctor *Shippen* may be oblig'd to propound and plead his

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pre

pretended Interest in due Form of Law; and that the Party propo-
nent may have Liberty to make his
lawful Defence, as by Counsel he
shall be advis'd. *Et ponit ut supra.*

Now it will be proper to de-
monstrate, that this *Plea*, consisting
of the foregoing *Allegation*, and *ad-
ditional Articles*, given in and exhi-
bited on the Behalf of Dr. *Welton*,
is *admissible* according to Law; and
that it does shew sufficient *Cause*,
and carry in it unanswerable *Rea-
sons*, why Dr. *Skippen* ought not to
have *Institution* to the *Living* of
White-Chapel.

And, first, as to the *Admissibility*
thereof; that is easily to be evinc'd,
as reasonable and equitable, from
the very Tenor of it.

The Requisites which the Law
expects for *admitting* an *Allegation*,
are, that it should be *Relevant* and
Concludent. And the *Relevancy* of
this, and its *Concludency*, in Law,
will appear plainly enough through-
out the whole Series, and in every
Article thereof.

It

It is *Concludent*, according to Law, inasmuch as the Articles are pertinent and appertaining to the subject Matter in Dispute, each being separate and distinctly relative thereto; or, at least, they are so when taken altogether, in the *Chain* and natural *Connexion* of the Fact.

It is also *Relevant*, because the several Facts therein deduc'd and set forth, if true, (as they are capable of being so prov'd, either from the *Answers* and *Confession* of the adverse Party, or by living *Witnesses*, or the Evidence of *Instruments*) will claim a *Relief* through the many *Consequences* thence arising, and naturally to be inferr'd and made Use of by the Party in his Defence, which will carry incontestable convincing Arguments and Reasons why Dr. *Skippen* should not have the *Institution* he asks for, as the *Case is circumstanc'd*, as will appear from what follows.

Article 1 The first Article sets forth, that Dr. *Welton* was duly presented, in *March* 1697, by Mr. *Nicholas*, *then, and now*, Patron of *White-Chapel*, to the Rectory of *White-Chapel*, vacant on the Death of Dr. *Payn*, with all the Rights, Members, and Appurtenances thereof.

This being not a collative nor donative Benefice, but *presentative*, where the Patron must *present* his Clerk to the Bishop, to be instituted, it is material to set forth the several Steps taken by Dr. *Welton*, from the very Beginning, to shew from the Time of the *Presentation*, how the same was regularly and duly obtain'd. First, by Reason that the Living was vacant *per Mortem*: And, secondly, that Mr. *Nicholas*, who *then* presented Dr. *Welton* to the Rectory, *was* and *is* the true and undoubted Patron or * *Advocate* of the Church, (as a Patron is call'd in the

* *Advocatus Ecclesie*, uti dicitur, quia tueri & defendere Ecclesiam, & ejus jura tenetur, ad instar Advocati, qui in Judicio Causam alicujus defendit. *Lynd. de Foro competent. cap. circumspici. Verb. Advocatus.*

the Canon Law, by Reason of his being engag'd to *defend* the Church under his Patronage, and the Rights thereof, like as an *Advocate* in Court does *patronize* and support the Cause of his Client) and that this *Patron*, to whom the Power of Presenting did in *full Right* belong, least the *Pleno ju-*
Church (*vacant* by the Death of the *re.*
late Incumbent) should be longer, as it were, in *Widowhood*, did, in *Viduata*
1697, *duly* present the Doctor, fit- *Pastore,*
ly qualify'd, (as being in holy Orders of Deacon and Priest) to the Bishop, to be instituted to the Cure of Souls, and inducted to the Living of *White-Chapel*.

This is a necessary, introductive, relevant Article, to lead the subsequent Part of the Allegation, and in order to shew that Dr. *Welton* was regularly presented to what he at *present* legally enjoys, to a Living then *void by Death*; which *Per mor-*
same Living is now *unduly* claim'd, *tem In-*
even in the *Life-time* of him the Incumbent, before *Resignation* or *De-*
privation, and under the *false Title* of a Presentation, from other pre-
D 3 tended

tended Patrons, *when as* the Patron who presented him, *was and is*, as this Article sets forth, the *then and present* true and undoubted Patron of the Living in Question.

As this Suit, being commenc'd at the *Instance* of Dr. *Shippen*, is between Party and Party, in a Case of *Meum & Tuum*, and not by Way of Articles, or Promotion of † *the Judge's Office*, therefore Dr. *Welton* is, *here*, intitled (in the first Place) to contest and litigate (in a contradictory * *Proceeding*) the Title or *Pretence* upon which Doctor *Shippen*, in this Cause, founds his Interest; and to dispute the Right of Patronage, and the Legality of the Presentation set up against him, as not having been AMOV'D, *previous to the Date* of such pretended Presentation, *in a judicial Manner*. Until which *Judicial Deprivation*, where an Incumbent is living, and has not resign'd, no new Pretence of Patronage can commence; more especially *such* a Pretence of Patronage and Presentation, (as in this Case) where the *Right* of the Patron,

† Ex Officio Judicis.

* In Foro contradictorio.

tron, so pretending to present, is disputed and deny'd: Inasmuch as this Article sets forth another *prior*, undoubted, and the *present* true *Patron* is alive. And even in Case a Deprivation were actually to be sentenc'd, by regular Steps, and Form of Proceedings, the *Patron*, who shall appear to be the true and *undoubted* Patron, (*pleno Jure*) will * Jus F
have Right to present *again* whom tronatu
he thinks fit to the Living; and est pote
thereupon Dr. *Welton* might be pre- stas p
sented *again*, by the *same* Patron, sentanc
under whom he had his first Title, institue
if the Living should be *judicially* dum a
declar'd void, Benefi
um va
cans.

* And the Right of Presenting is *Lancel*
undoubtedly in the *proper* Patron; *Instit.*
but then the Living must be first *Defini*
Jur.
vacant. tron.

† Wherefore, in such Cases as † *Gode*
this, where two, or more, present p. 256
under Pretence of several Titles, *Sect. 7*
the Church is properly call'd *litigi-* Dr. &
ous, obliging the Ordinary, at his Stud.
Peril, to direct a || Writ, to enquire 30.
which has the *Right of Patronage.* || De
re Pa
natus

'Till, therefore, these Obstacles are remov'd ; 'till the Points, first, of the *Vacancy* of the Living, and then, as to the *Right of Patronage*, are adjusted, and in a *judiciary* Manner determin'd ; a new Grant, or *Super-Institution* unto the Living, is apprehended irregular, a *gravamen*, and a Nullity, merely *void* in it self.

icle 2 Now, as to the second Article, it appears, That Dr. *Welton*, pursuant to such Presentation, was, by the then Bishop of *London*, duly and canonically admitted, instituted, invested, and inducted, into the Rectory of *White-Chapel*, with its Rights, Members, and Appurtenances, and put into the real, actual, and corporal Possession of the same.

The Form of a Presentation, or Nomination of a Clerk to the Ordinary, by a Person in whose Gift a Spiritual Living is, closes in Way of Petition, || earnestly desiring that
such

|| *Obnixè rogans, &c.*

such Clerk be † admitted, instituted, and canonically invested by the Bishop into the Benefice void, together with all its Rights, Members, and Appurtenances whatsoever; and that all other Matters and Things therein, as shall appertain to his pastoral Office, might be perform'd and done accordingly.

Pursuant, therefore, to such *Presentation* to the Living, (then vacant) this Article sets forth what was done, as a *Consequence* of that *Presentation*, and of the Patron's *Petition* therein, viz. That he was duly and canonically *admitted, instituted, invested, and inducted.*

Tho' ADMISSION, *strictly speaking*, means, and is, when the Bishop, upon Examination, *admits* the Clerk to be a *fit* Person to receive
Holy

† Ad dictam Rectoriam admittere, ipsumque Rectorem ejusdem, ac in & de eadem instituere canonicè, & investire, cum suis Juribus, Membris, & Pertinentiis universis, cæteraque omnia & singula facere, peragere, & perimplere, quæ vestro in hac Parte incumbunt Officio pastoralis, gratiosè dignemini cum favore.

Admit-
Te Ha-
lem.

Holy Orders, saying, || *I admit thee as qualify'd*; yet, in a more general Acceptation, and in the Sense of this Article, it alludes to *Institution*; which *Admission*, or *Institution*, is the actual Conveyance of the Spiritual Cure, by the Bishop's saying, * *I appoint thee Spiritual Governour of this Church, with the Cure of Souls: Take therefore not only thy Care, but also mine upon thee.*

It is requisite, therefore, to set forth, that the Doctor was *admitted* and *instituted*; and that afterwards *Induction* was, as this Article sets forth, *duly* granted to him; whereby he was *invested* in the Rectory of *White-Chapel*, with its Rights, Members, and Appurtenances; and put into lawful Possession of the Church and Glebe; and became *compleat* Incumbent; and had the *Freehold* in him.

Which *instituting* and *investing* of a Rector into a Cure of Souls, was, here-

* *Instituo te Rectorem talis Ecclesiæ, cum Cura animarum, & accipe Curam tuam & meam. [Vide p. 12.]*

heretofore perform'd by the Bishop, with a * *Ring*, as in Matrimony, (as may appear by the ancient *Forms*) thereby signifying the *Spiritual* Marriage which the Bishop solemnizes between the *Minister* and the *Church*. Whereupon, the Ecclesiastical Laws *abhor* a Person intruding into a Living not *vacant* by Death, Resignation, or Ecclesiastical Deprivation, and term him an *Adulterer*.

And the Form of the Bishop's || *Mandate* for Induction, not only enjoins to put the Clerk into real, actual, and corporal *Possession* of the Benefice, and its Rights, Members, and Appurtenances, but also to *defend* the Person, so inducted, in his rightful Possession.

And in some † *Forms*, the Manner of defending a Person inducted, is

* Te ad Presentationem supradictam admittimus, & Rectorem in eadem instituimus, ac ipsam Ecclesiam per nostrum Annulum investimus. *Winchelsey Regist. fol. 170.*

|| Inducatis inducivè faciatis, & defendatis inductum.

† Et in ejusdem corporalem Possessionem inducatis, Contradiectores & Rebelles per Ecclesiasticam Censuram compescendo. *Peckam Regist. fol. 53.*

is explain'd to be by denouncing *Excommunication* against rebellious Intruders.

And after the Clerk is thus *inducted*, or led into the Church, he hath, as it were, *Livery* and *Seisin* thereof given him, as lawful *Incumbent*, by *Delivery* of the Church to him, and that by Order of the Bishop, whereof *Publication* is then made to the Parishioners by ringing a Bell: And the Church thereby becoming FULL, no *Avoidance* can be, during *his Life*, without his voluntary *Consent* and *Renunciation*, or by *Suit*, and regular Methods of *proceeding* against him: And as *Induction* (giving a *temporal* Right and Possession of the *Freehold*) is not to be *avoided*, but by *Suit* at Common Law; so, likewise, *Institution* (canonically *investing* a Clerk in the Possession of the *Spiritualty* and Cure of Souls) is not to be *avoided*, but by *Sentence* of *Deprivation*, in an Ecclesiastical Court; which was not done *at the Time* of the pretended *Presentation* of Dr. Skippen; therefore the Living could not, at the
Date

Date of such pretended *Presentation*,
be said to be *void*.

Now we come to speak of the Article
third Article of the Allegation, the
Purport of which, abstracted, is,
That Dr. *Welton* hath read the *Thirty Nine Articles*, and declar'd his
Assent and Consent thereto, and to
the *Book of Common Prayer*, (as by
Law requir'd) and *has* perform'd all
other Things, to qualify him *to be*
compleat Parson, Incumbent, and
Rector of *White-Chapel*.

Whereas the Particulars, deduc'd
in this Article, are requir'd to be
done and perform'd by Ministers,
is it not therefore material they
should be set forth, and alleg'd;
whereby to shew, that there is no
Omission of any Thing requisite to
be done, to qualify and establish the
Doctor in his Living? And if it
be granted, that Dr. *Welton* became
once *compleat* Parson, it is incum-
bent, on the other Side, to *prove*
how, and when he was canonically
depriv'd, by reason of any previous
Omission, or how the Living be-
comes

comes otherwise *void*, by any Act of his, as *Resignation*, (even which must be approv'd of by the Bishop) or, else, how and when the Living, by regular Steps and *Proceedings* under the Episcopal Jurisdiction, and *Sentence* of an Ecclesiastical Authority, has been *judicially* and canonically pronounc'd *void*, on Account of any Crime by him since committed: So that 'till one of these are regularly had, and done, (canonically and in a judicial Manner) he continues, and is, a compleat Incumbent and Rector, both as to *Cure of Souls*, and as to the *Temporalities* of his Parish.

It is seasonable here to observe, that most Part of the precedent Allegation, given in on Dr. *Welton's* Behalf, and hitherto spoke of, has been *confess'd* to be true, as appears by an Act of Court, on the third Session of *Trinity Term*, wherein it is own'd, by the Proctor on the other Side, in this express Manner:

se fals-
est. “ That Dr. *Richard Welton* was
“ (about the Time mention'd in the
“ Allegation, given in by Mr.
“ *Oughton*,

“ Oughton, and now pray’d to be
 “ admitted) *duly* presented, institu-
 “ ted, and inducted to the Rectory
 “ of St. *Mary Matfellow*, aliàs
 “ *White-Chapel*; (as in the said Al-
 “ legation is set forth) and after
 “ such his Presentation, Institution,
 “ and Induction, he did and per-
 “ form’d all Things requisite by
 “ the Laws of the Land, to make
 “ him full and compleat Rector and
 “ Incumbent of the said Rectory.”

This Response and Confession re-
 lates only to *Part* of the Substance
 of the first, second, and third afore-
 mention’d Articles of the Allegati-
 on, on Behalf of Dr. *Welton*; which
 three first Articles are laid only as
 an Initiatory and Introductive to
 Facts alleg’d in the subsequent Ar-
 ticles: Which subsequent Articles
 of that Allegation, are *equally rele-*
vant to the present Case and Pur-
 pose, and *equally admissible* with the
 former; for that they appear to be
 even a natural Inference from, and
 Consequence of, those very prece-
 ding Articles; (as has been already
 accounted for, and will be present-
 ly

ly farther demonstrated) and therefore ought *equally* to be *answer'd* to by the other Side, and prov'd, if deny'd.

But let us consider what *Part* of these three first Articles is *omitted* and *evaded*, in the foregoing Answer of the Proctor; which Answer ought to be categorical, and full, as to every *Particular* of each Article; and such *full* Answer, to each Particular, is always insisted upon, and ought to be given by the adverse Party, on Oath, or by his Proctor, and must be a *positive* Confession or || Denial. And in Case the Client cannot be *reliev'd* by such Answer and Confession of the adverse Party, or his Proctor, (which he is intitled to have, as has been said, to *every Particular*, and which he is then at Liberty to make Use of, or *not*, according as it shall serve his Purpose :) If he cannot (as has been said) have *Relief* from the Answer of the adverse Party, or Proctor, by Reason of their denying *any particular* Fact laid; then he must have a Term probatory assign'd him, and prove the

Credit
el fallus
st, vel
non cre-
dit.

the Facts he has so alledg'd, (and which in such Answers are deny'd) by the Testimony of *Witnesses*, or by the Evidence of *Instruments*, in a regular Manner of Proceedings, according to the common Practice and Style of the Ecclesiastical Courts.

Let us look back, then, into these three Articles, and see what *Particulars*, therein deduc'd, are not answer'd by the Proctor's *Fassus est*, or Confession.

Why, truly, the most material Part is neither *confess'd* nor *deny'd*, but industriously *evaded*: For Example, it is laid in the first Article, that Dr. *Welton* was presented by Mr. *Nicholas*, the then and *present* true and undoubted Patron. In the second, That the Doctor was put into real and corporal *Possession*. In the third, That he hath done and perform'd all Matters and Things *whatsoever, which by Law he ought to do*, to qualify and enable him to be compleat Parson, Incumbent, and Rector. The second is own'd indeed, by allowing he receiv'd *Induction*; but Part of the third is *evad-*
E
sively

sively answer'd, by owning only that he *did* and perform'd all Things requisite, by the Laws of the Land, to make himself full and compleat Rector and Incumbent; whereas it is said, that he *batb* done what by Law he ought, or is requisite *to do*, to enable him *to be* compleat Rector and Incumbent; that he *did*, is confining it to the *præterit* Time of his Induction, [that he *then* did]; but the Latitude of this Article extends farther, in saying, he *batb* done; which is to be constru'd, at the Time of laying this Allegation, [that he *batb* now done]; what enables him *to be* [which is in the Present Tense] Rector and Incumbent; including, not only what he *did* previous to his Induction, but that he *has* done, (as the Words of the Allegation are) at the Time of the Date of such Allegation, what is requisite for him *to do*, *to be* or *continue* Rector: But that he *has now* so done what is requisite for him *to do*, whereby to *continue* Rector, the other Side has hitherto *avoided* to answer; and, instead of a *direct* Answer,

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 r,
 ever, is for Supporting their *Evassi-*
on, by a very weak Way of Argu-
 ment, (if it may be call'd any) by
 begging a *Question*: If the Doctor,
 say they, has taken the Oaths, re-
 quir'd by a late Act of Parliament,
 why does he not shew it, by produ-
 cing a Certificate to that Effect? Was
 it ever known, that an Anta-
 gonist could prescribe the *Methods*
 his Adversary should take? He is to
 make the *best* of his Defence his
own Way, and to chuse the Steps
 he shall be *best* advis'd are *most* pro-
 per for him to take; and not to be
 directed by the other Side. But if
 he *has* done all that is requisite to
 do, to continue Rector, they are
 disappointed; and if he *has* not,
 the Proof lies upon the Prosecutor.

VERB
 This Part of the Article, therefore,
 [that he *has* done what is requisite
 to do, to continue Rector] the other
 Side seem very much afraid of, as
 being conscious of its *Relevancy*, and
 therefore so shy to answer: And
 the very asking of Dr. *Welton* to
 prove it, acknowledges the *Reason-*
ableness of its being admitted; tho',

even when they ask Dr. Welton to prove it, they avoid *answering* it, which is Part of the *Proof* to which Dr. Welton is *first* intitled. And it is a very odd Way of *Usage*, to require of Dr. Welton to do a Thing, and at the same Time to deprive the Doctor of one Part of the Means of *so doing*, which even they themselves *detain* from him, by *declining*, and not giving their Answers, as, *first* of all, they ought to do. For the Point is not here argu'd upon, whether he *has* or *has not* taken the Oaths, but to put the other Side, *by the Manner of Suggestion*, upon the *Proof*, according to the *Form* of Proceedings.

In the next Place, another *Evassi-*
on of another Matter of *Fact*, prin-
cipally *relevant*, in this Case, may
be detected, which is their not an-
swering (*credit, vel non*) to that
Paragraph (of the first Article of
Dr. Welton's Allegation) which says,
“ That the Doctor was presented
“ by Mr. *Nicholas*, the then and
“ *present* true and undoubted Pa-
“ tron; which, if *fully* answer'd
and

and confels'd, (as they must in Conscience do when upon Oath) would obviate their Pretences, and put a short End to the Cause, and save the Trouble of urging, and the Court of hearing, any farther Plea or Argument on either Side : But their Answer is very concise, as to this, confessing only, *That he was duly presented* but what have they to say to Mr. *Nicholas's* being the *present* Patron? to which the Party is entitled *equally* to have their Answer, as well as to the other : Why, that, truly, they would willingly slip over; and why? Because, if he is *Patron*, then *Brazen-Nose* College has *no Right* to present : For, supposing (*argumenti gratia*) that the Doctor has forfeited; yet, if *Nicholas* is undoubted Patron, *pleno jure*, he may present him again. But being in a great Hurry to pass by this Point, they would fain have it, that if the Living is *void*, there is no more to do, but that the *Presentati-on*, which they have got, *right or wrong*, without any farther Enquiry into the Matter of Fact, should

take Place. They have Reason to hurry Matters on, indeed, as this is the Case, lest, if their *Title* should appear to be groundless, (as its being taken the least Notice of, which is their Fear, will discover it to be) then they will be disappointed in the Career of their intended *Usurpation* upon another's Right; for so it will be, (as this Case is stated) whether the Doctor *has* or *has not* forfeited; if he *has*, it is an Intrusion upon the *Right of the Patron*; if he *has not*, it is an Intrusion upon his *Right*, as *Incumbent*. And ought these *both* to be slurr'd over, and not separately inquir'd into, with a Scrutiny of the greatest Solemnity, which the *Dignity* of such an Affair, as the Rights of *Patronage*, Grant of *Institution* and *Induction*, and *Privilege* of *Benefice* require?

Now Notice has been taken of their *evasive* and *imperfect* Answers to the *three first* Articles, it will be proper to proceed upon the rest, and to shew how equally *relevant* (unto the present Purpose) are the *other* Articles of Dr. *Welton's* Allegation;

(as having either a mutual Tendency *towards*, and Connection *with*, those prefatory or introductive ones; or, as carrying a Weight of *Reason*, in their natural Consequence, and Inference to be drawn *from* such precedent ones) and that upon their being admitted, the *Answers* of the adverse Party ought to be given to the *whole*; and if Relief be not thereby had, that the Facts so pleaded may be thereupon admitted to *Proof*, in due Form of Law.

To go on, then, with the fourth Article of Dr. *Welton's* Allegation, which is in Substance,

That Dr. *Welton* is, and (for nineteen Years) has been the Parson and Rector of *White-Chapel*, and hath, *hitherto*, peaceably possess'd it; That the Rectory, or Living, is *not vacant*, but *full*, by his Incumbency.

Here is *Plenary* and peaceable Possession, for many Years; quiet Enjoyment from any Pretensions *hitherto*; and (as the Purport of this Article sets forth) the Living, in

Question, is *not* (as yet) *vacant*, but (at present actually) *full* of an Incumbent; and, *if so*, no *Presentati-on* can be admitted, 'till the Incumbent is *first* regularly *depriv'd* of his Living, by proper Steps and Proceedings (*in a judicial Manner*) and the Living becomes **void* of the Incumbent; for it is *expressly* set down in the Canon Law, That he who doth cause or procure himself to be *Instituted* into a Benefice, the Incumbent thereof being *alive*, shall be *depos'd* from his Orders. [*Lib. 3 Decretal.*]

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5.

Jur.
P.

And even tho' the Bishop be com-
manded by the King's * Writ, to
give Institution to a Benefice *that is*
full,

* Rex venerabili in Christo Patri S. eadem
gratiâ Episcopo C—— Salutem : Sciatis quod
B. in Curia nostra, &c. recuperavit Præsentati-
onem suam versùs A. ad Ecclesiam de M. quæ
vacat. (ut dicitur) per Defaltam ipsius A. ; &
ideo vobis mandamus, quod non obstante Re-
clamatione prædicti A. ad Præsentationem dicti
B. ad Ecclesiam prædictam idoneam Personam
admittatis, &c. Teste, &c.

full, he is to || return, *that it is full,*
and therefore he cannot comply
with such Mandate.

And (according to the old Forms)
it is enough for the Incumbent to
say, * That the Church *is not void,*
or for the Proctor to alledge, †
That the Church is full, by the
Incumbency of his Client, and, as
such, already *advisedly* or legally
determin'd or establish'd; and that
his Client, thereupon, ought not to
be *amov'd* from his *Possession* thereof,
but

|| Si aliquo evincente *fus Patronatus* contra
alium, in Foro Regio, scribat Rex Episcopo,
vel alteri, ad quem *Institutio* pertinet, quod
Presentatus ab illo, qui evicit, admittat, *si Be-*
neficium VACAVERIT, ne PATRONO
FIAT INJURIA, & aliud nihil obstat
Canonicum admittatur liberè *presentatus*. Si
VERO NON VACAT hujusmodi Benefici-
um, Domino Regi, vel Justiciariis, *habet nun-*
ciare perlatum excusando se; quia tale Beneficium
NON VACAT, non potest Mandatum Re-
gium adimplere.

* Dicit quod Ecclesia non est vacans:

† Ecclesia noscitur de Domino meo *plena,*
esse pariter & *consulta*; nec est idem Dominus
meus a *Possessione* dictæ Ecclesiæ quovis modo
amovendus; sed est idem Dominus meus in
pace DIMITTENDUS; quod peto fieri
cum effectu.

but ought, without any farther Trouble, to be *dismiss'd*; which he is to pray accordingly.

And, hereupon, * the *Proof* is thrown upon his Adversary, (the Party, Agent, or Plaintiff against him.) For the || *Law* has always a more tender Regard, and allows a Screen of greater Favour to a *Defendant*, than to a *Plaintiff*. So that if the Actor, or *Plaintiff*, makes not a full † *Proof* that the Living is legally vacant, the *Defendant*, even supposing he was guilty, ought to be *dismiss'd* according to Law, in Virtue of his having *Possession*, altho' he had alledg'd *nothing* in his own Defence, and altho' he has no Manner of ‡ *Right to hold*, and has no other Pretence.

* Onus probandi.

|| *Reo favendum est, potius quam Actorj.*
 II *Reg. Jur. lib. 6. Decretal.*

† *Actore non probante, Reus absolvitur, etiamsi nihil præstiterit. Sum. Jur. Can. pag. 522. l. 4. c. De edendo. c. Si. Sect. Extr' de Jur. re Jur.*

‡ *Et si nullum in Re jus habeat, solaq; Possessione se tueatur. l. Si. c. De Rei Vind.*

Pretence to Title and Possession, but purely as being actually an Incumbent, and in *Possession* of the Living. For the * *Law* of proceeding in Causes, takes its Measures not from the Steps of the *Defendant*, but of the Actor or *Plaintiff*: || In-
 somuch, that although the *Defendant* should take upon him to *prove* any Matter in a Cause, and should *fail in such Proof*, his Defect herein shall not avail the *Plaintiff*, so as to have Judgment on his Behalf there-upon ensue, without *Proofs* of his own; for it is an *eternal* Maxim in the † *Law*, That upon the *Plaintiff's* not making his due *Proofs*, the *Defendant* shall be dismiss'd.

As the foregoing Subject hath set forth, That, in this Case, Dr. *Welton* had the Possession and Enjoyment

* Quippe *Jus* agendi metimur, non ex *Personâ ipsius Rei*, sed *Actoris*. l. 1. Sect. Si *Pars* *hered.*

|| Usque adeò licet *Reus* onus probandi in se receperit, & Probatione defecerit, nihilo enim magis *Actori* adjudicatum fit. l. circa 14. de *Probation.* & ibi *Gloss.* & *Bartol.* 1.

† Semper enim illud remanet, *Actore non probante, Reus absolvitur.* lb.

ment of a Benefice, it follows, as in Course, to add and demonstrate some farther *Privileges* arising from such Possession and Enjoyment, under which he is intitled to claim a *Security*, and then to shew how such his *Right* is not capable of being defeated or taken away, usurp'd, invaded, molested, or infring'd upon. And this is, in some Measure, accounted for in the following Article of his Allegation, and will be hereafter more fully evinc'd. *First*, therefore, as to the Substance of the fifth Article, it contains,

icle 5 That Dr. *Welton*, being *instituted* and *inducted*, hath, thereby, not only had and obtain'd the *Cura of Souls*, within the said Parish, but is also thereby intitled to the *Freehold* thereof, and Tythes, &c. and (having had quiet Possession for so many Years, as before-mention'd) ought not to be disturb'd, amov'd, or disseiz'd, *unless legally depriv'd*; but ought to hold it for *Life*.

This

This Article speaks the very necessary Consequence of the second Article, (before-mention'd) which tells us, That Dr. *Welton* was duly instituted and inducted, (which Matter of Fact seems to be beyond Dispute, and even allow'd of by the other Side.) Whereupon this Article says, by Consequence, That being so instituted and inducted, he has not only the Cure of Souls, but the *Freehold*. And having, for so long Time, possess'd them, (as has been mention'd in the very next precedent Article) he ought not to be disturb'd, remov'd, or differ'd, (till legally depriv'd) but should hold it for Life.

Every Rectory consists of a *Spirituality* and *Temporality*: As to the *Spirituality*, (which is the Cure of Souls) the Clerk is a compleat Parson by *Institution*; but as to the *Temporalties*, (as Glebe-Land, &c.) he has no frank Tenement therein, 'till *Induction*; both which *Spirituality* and *Temporality* ARE VESTED (as this Article sets forth) in Dr. *Welton*.

Co. 4.
Rep.
Digby's
Case.

In-

ulfr. *Induction* is an Act of a Temporal Nature, as it is every where accounted by the Books of the Common Law, by Reason, as is there urg'd, it instates the Incumbent in the full Possession of the *Temporalties*.
79. The Effects and Consequence of
titl. 165 *Induction* have been mention'd before; for after *Institution*, the Clerk does not become compleat Incumbent, 'till *Induction*, (which the Common Law calls Corporal Possession) whereby he is seiz'd of the Temporalties of the Church, whereby he is fully intitled to plead, (as Occasion may require) that he is Parson Imparsoned. By this Means is the Church full, not only against a common Person, (for that it is by Virtue of Institution) but also against the King; and, by Consequence, it is compleatly full, and the Clerk is compleat Incumbent or Possessor. Upon which it is compar'd, in the Common Law Books, to Livery and Seisin, (as has been said before) by which Possession is given to Temporal

ral Estates, and the *Freehold* is thereby invested for *Life*.

Thus much as to the *Induction*, which shews the Opinion of the Common Law in Cases of this Kind: And as to the *Institution* and Grant of the *Cure of Souls*, under the Episcopal Sanction, can that (which, indeed, should have been first of all spoke of) *Sacred Cure* and *Trust of Souls*, as it were, transfus'd from the very Essence of the Episcopal Authority, to the invested Priest, by the Words, (as has been said before) * *Take not only thy Cure, but also mine upon thee*; be abstracted and revok'd by any other Breath than that which gave its Being? And ought the Person so possess'd of this *Spiritual Cure*, to be disturb'd, remov'd, or disseiz'd, otherwise than (as by parallel Reason) even the Common Law indulges to oust the Possessor of the Temporality or Freehold, which is by *legal Process* and *Proceedings*? And as the one is granted, in the utmost

* Accipe Curam tuam & meam.

utmost Favour, in Regard to *Possession* only of the *Temporalties*, shall not the Ecclesiastical Judge have an equal Tendernefs and equitable Regard, as to that Point of *Spirituality* cognizable before him, in which the Right of the Parson in *Possession of the Cure of Souls*, (already confirm'd by Authority of the very Bishop's Sanction) is the Matter in Dispute, and the Matter to be justify'd and defended by the very Hand that gave it?

Till, therefore, as is insisted upon by this Article, there is a legal (which is a Canonically regular *Deprivation*) the Power given by Institution, *as to the Spirituality*, cannot be disannull'd, (as the *like* is to be said concerning Induction, in Common Law, as to the *Temporalties*.)

Now, whereas it has been said before, that Dr. *Welton* has had regular Institution, and Induction, and Possession of his Benefice, the sixth Article sets forth,

That

That Dr. *Shippen* (by endeavouring to get Institution and Induction to *White-Chapel*) endeavours to deprive and amove Dr. *Welton* from his Rectory, *Freehold*, Tythe, Manse, Glebe, &c.

It is plain, that by the Steps made on Behalf of Dr. *Shippen*, (however wrong and mistaken) he has a View of amoving Dr. *Welton* from such his Rectory and *Freehold*.

* A Rectory being a spiritual Living, compos'd of Glebe-Land, and Tythe, and other Oblations of the People, separate, or dedicate to God, in any Congregation, for the Service of his Church, and for the Maintenance of the Minister to whose Charge the same is committed; the Freehold (which the Common Law has Cognizance of) is the Incumbent's in Possession, (*for Life*) nor can he be *ousted* hence, but by methodical and formal *Process*, (as has been hinted before) so that in

F Strictness,

* *Con. Int. verb. Parsonage. Spelm. de non temerandis Ecclesiis.*

Strictness, what Dr. *Shippen* attempts at, is triable in another Judicature, which regards the *Possessor* of a Benefice, in Opposition to an Intruder ; and as to the Institution, (he aims at) Dr. *Welton*, as Rector, * has thereby as much Right in his Parish-Church, as a Bishop has in a Collegiate Church.

And the Ecclesiastical Laws have so tender a Regard, to prevent *Intrusions* on a Living, (where there is an *Incumbent*) that even in Case of Death, or Cession, *Inquisition* was to be made for the *Certainty* of such Decease, or Resignation, before the Ordinary would hearken to the Applications of another Person to be admitted to such Living. †

To defeat the crafty Insinuations of ill-designing Men, requires the elaborate watchful Study of all that have

* *Tantum jus in Ecclesia Parochiali habet, quantum Episcopus in Ecclesia Collegiata. Cow. Int. verb. Rector.*

† *Ad elidendum fallacias iniquorum Sagaci Studio est laborandum cuilibet Justitiæ Amatori, ne si torpescat Rectorum Industria, Simplicitas per Versutiam supplantetur, et succumbat Veritas Falsitati.*

have a Love for Justice, lest, if the Vigilancy of a Rector should happen to be somewhat remiss, Innocence may be supplanted by Treachery, and Truth overwhelm'd by Falshood. Thus speaks the Preamble in * *Lyndewode*, of the Constitution of *Otho*. against Intrusion and Usurpation. * *Otho*.
Const.
fol. 29.

And the Clause next following, decries the Custom of such as cast their Eyes upon a fat Benefice, in the Absence of the Incumbent, pretending he is dead, or has resign'd, and thereupon *intrude* into his Benefice: Whereas in Truth, the poor Man is alive, and lives, upon his Return, to see his own Doors shut against him. ||

F 2

But

|| Sanè ex relatione plurimorum accepimus quòd quidam Presbyteri in absentis, beneficium Oculos jacentes, fingentes novos rumores, asserunt se audivisse mortuum esse, vel Beneficium resignasse Beneficii Possessorem, Sicq; procurant in illud quomodolibet se intrudi, & si fortassis reviviscens, qui mortuus fuerat, ad suam Ecclesiam revertatur, responderetur eidem, nescio te, & clauditur Janua contra eum.

But what comes more near, and parallel to the Case in Hand, is the subsequent Paragraph of the same Constitution, where it takes Notice of *Intruders upon another's Right*, (even where the Person is living and incumbent): † Such there are, (says he) who, blinded with an Over-Desire of the Profits of Ecclesiastical Preferments, become not afraid (clandestinely, or as Opportunity offers) to break in, and invade, upon the Benefices of the Absent, but even of those who are present upon the Spot.

* Wherefore, to administer a Remedy (as far as may be) in these Cases,

† Nonnulli etiam, nimia cupiditate cæcati, non solum in Absentium, sed etiam in Præsentium Beneficia, clanculo, vel ubicunq; possunt, irrumpere, vel invadere, non formidant.

* In utroq; igitur Articulo, remedium, quale possumus, adhibentes, Statuimus, districtius prohibentes, ne prætextu opinionis, vel famæ, quæ de morte, vel cessione habeatur absentis, ejus Beneficium aliquatenus conferatur, *sed expectet Prælatum, donec plenius, de alterutro instruat*; alioquin ad resarciendum omne damnum, ex hoc inflictum Absenti,

Cases, it is ordain'd, and strictly prohibited, that the Benefice of an Incumbent, in his Absence, should not be conferr'd on another, under Pretext of an Opinion, or a Report, which is spread of his Death, or Cession; but the Bishop should *delay*, 'till he is *fully* inform'd as to the *Vacancy*; otherwise, he shall be oblig'd to make Satisfaction to the Person injur'd, for the Damage in such Case sustain'd: And he who has got himself to *be thrust in upon the other's Right*, shall be *ipso facto*, *suspended* from his Benefice, and from his Office.

This shews what a solemn Regard the Ecclesiastical Laws have to protect the *rightful Possessor* of a Church; and how odious a Thing it was look'd upon to be, to infringe, or attempt to intrude, invade, or *usurp* upon, a Living

F 3

not

ti, eum fore decernimus obligatum, & illum qui se procuravit intrudi, præter restitutionem damnorum, ab Officio, Beneficioq; suspensum prout, ipso facto.

not void ; and how strictly the Ordinary is oblig'd to enquire, as to the *Vacancy*, how fully he ought to be satisfy'd of it, and how tenderly he should proceed in a Case where a Benefice is not *actually prov'd* to be * *void* of the Person of the Incumbent.

Our Ecclesiastical Law - gives lock'd with such an Eye of Resentment upon an *Intruder* on a Living, *before it was vacated*, that (as we have it in another Constitution of *Lyndewode*, intitled, *Bonifacius*) a Clerk who was either *intrusus per se*, (that is, according to what is aim'd at in the present Case) thrust upon a Living, as it were, by a Self-Impulse, (for so it may be term'd where a Person is *presented*, before the Bishop has *declar'd* the Living *vacant*) that he is *intrusus per se*, (for so he is without a *previous* Sanction, so essentially requisite, of the Bishop's interposing his Opinion of a *Vacancy*.) If a Clerk therefore,

* *Vacua de persona Incumbentis.*

therefore, was either *intrusus per se*,
aut per Laicam Potestatem, such
Intruder is there denounc'd to be a
 Person *excommunicate* and *de-*
priv'd. ||

Thus the Definition and De-
 scription of an Intruder is given,
 and here call'd one that aims at a
 Living * without, or previous to,
 an Ecclesiastical Deprivation, ac-
 counted by the Canon-Law, so
 essentially requisite to be first ob-
 tain'd, as the very Foundation of a
 Title to a Benefice, where an In-
 cumbent is living, and has not re-
 sign'd; for which Reason, a Clerk,
 who *attempts*, of his own Head, or

F 4

Ac-

|| Quia frequenter accidit, quòd nonnulli
 Clerici, per Laicalem Potestatem, Ecclesias
 occupant Parochiales, vel Præbendales, etiam
 Curam Animarum habentes, & in eisdem,
 absq; autoritate Ecclesiastica, intruduntur;
 Statuimus quòd Clericus sic, per se, vel per
 laicam Potestatem, intrusus in Ecclesia vel
 Prebenda (SERVATA JURIS FORMA)
 Excommunicetur & Excommunicatus, per
 loci Dioecesanum, denunciatur, ET ILLO
 BENEFICIO, IN PERPETUUM,
 CAREAT, IPSO FACTO.

* Absq; Autoritate Ecclesiastica.

Accord, without a Vacancy first judicially decreed, to become an *Intruder*, † without an *antecedent* Interposition of the Bishop's Authority, to declare the Living *void*, is such a one as, the Law has an *odious* Opinion of ; such a one as is to be accounted as an *Excommunicate* ; and such a one as, according to the Words of the Constitution, * ought never to enjoy the *Benefice* he in such Manner aims at.

And, as to a Delinquent, even in this *flagrant* Case of *Intrusion*, by getting presented to a Living *before* it is declar'd void by the Ordinary, which (in the Constitution last mention'd) is styl'd by the Name of *Sacrilege*, it is said, § Let him be excommunicated in due *Form* of Law : Which Words of the Constitution, [*in due Form of Law*] the Gloss of *Lyndewode* thus explains ; || that a Canonical Admonition

† Vel per se vel per Laicam Potestatem.

* Illo Beneficio in perpetuum careat.

§ Servatâ juris Formâ excommunicetur.

|| Præmissa monitione Canonica ut à tali Beneficio actualitèr recedat, & illud dimittat.

monition is to be previously made, that such Person should recede from his Pretensions, and actually leave such Benefice which he has so intruded upon. And is it not with Parity of (or even with superior) Reason, allowable in the Case in Hand, as being in the Eye of the Law, of a *favourable Nature*, that all the Steps in *due Form of Law*, should be regularly taken? If this *due Form of Law*, therefore, had been observ'd in this Case, the Method of Proceedings against Dr. *Welton*, should have been begun and carry'd on by Dr. *Skippen* in another Manner; in a *Manner* consonant to *Law*, and to *Reason*, viz. by a regular Process *Servatâ juris formâ*, by getting a *Deprivation first*, and obtaining a *Presentation after*, if there should be found any Room or Grounds *for either*.

So jealous were the Ecclesiastical Constitutions heretofore of the Jurisdictions of the Ordinary, that (in the same Place of *Lyndewode*) it is said, That if an Intrusion is back'd by the Regal Authority, the King
is

is to be monish'd by the Diocesan of the Place, that he would order it to be revok'd; otherwise, that the Bishop should put the Land and Places belonging to the King in that Diocese, under an Ecclesiastical Interdict; which is, that nothing sacred, should be perform'd within that District. *

And (in another Place of the same Constitution) it seems, not only the Instruments and Abettors concern'd in such Intrusion, (which (in this Case) must be the Patrons and the Party) but also the || *Coun-*
tenancers of it, are censur'd, and made liable to severe Penalties. In order to preserve the Jurisdiction of the Ordinary from being encroach'd upon by Way of *Intrusion*, in obtaining a Presentation to a Benefice *antecedent to his declaratory Sentence of a Vacancy*, which is farther ex-

Fautores
 Coope-
 tores
 hujusmo-
 di Intru-
 sionis.

* Si verò hujusmodi Intrusiones factæ fuerunt ex Regia Potestate, per loci Diocesani-
 num moneatur Dominus Rex, quòd eas
 faciet (infra tempus competens) revocari,
alioquin terra, et loca quæ Dominus Rex habet
in illà Diocesi, in quâ facta fuerit Intrusio,
 Ecclesiastico supponantur Interdicto,

explain'd (in the Gloss of *Lyndewode*) upon the Words in the Beginning of this Constitution, * concerning a Clerk intruded by any Power antecedent to, or without the Ordinary's Authority *first had*, which is, as in this Case, by getting a Presentation *before a Vacancy be decreed*.

The Constitution of *Othobon* goes *Lyn. f.* somewhat farther upon this Case; ^{97.} having (in his Preamble) set forth and condemn'd *Intrusion*, which he calls an immoderate and damnable Presumption of *Self-Interest*, overwhelming the very Reason and Judgment of a Man that *rashly* covets another's Right, and *abdicates Charity*. ||

Then the Substance of the former Constitution of *Otho*. is recited,
and

* [Clericus sic per se, vel per Laicam Potestatem Intrusus in Ecclesia.] Idem Intelligas, si per Clericam Potestatem hoc fiat, talem scilicet *qua non sit Ordinaria nec Authoritativa*.

|| Amoris proprii damnabilis & immoderata præsumptio, subvertens in Judicio Rationem, dum sibi alienum, temerè, concipiscit, Charitatem tradit Exilio.

and it is farther order'd and appoint-
ed, That no Person shall presume
to *present*, but upon *Proof* or No-
tice of a real *Vacancy*. *

And even in such Case where the
Patron has Knowledge of a real Va-
cancy, and presents, to save a Lapse,
† yet the Ordinary shall by no
Means venture to admit the Person
so presented, or grant him *Institu-
tion*, unless it be first prov'd (*clear-
ly*) to him, that the Living is *really
vacant* by Death of the Incumbent,
or other *lawful Means*. ||

And what is meant here by
other *lawful Means*, is explain'd in
the

* Nos autem latius, & plenius mederi per
nostrum Antidotum cupientes, a djciendo
statuimus, ne quis, de cætero, Patronus Ec-
clesiasticus, vel Secularis, ad Ecclesiam, in
quâ Jus obtinet Patronatûs, quenquam aude-
at præsentare, nisi *Probabilem* habeat de ipsius
Vacatione notitiam.

† In quo casu, licet præsentare potest, ne
sibi (per *lapsum* temporis) præjudiciû gener-
etur.

|| Prælatus tamen, ad quem *Institutio*
spectat, nequaquam præsumat Præsentatum
admittere, vel *Instituere*, nisi de morte Re-
ctoris, vel aliter, de *Vacatione legitimâ* prius
constiterit.

the Gloſs of *Lyndewode*, thereupon to be by *Reſignation* or *Privation*, by *judicial Proceedings* and *Sentence*. †

And Proofs, as to *Vacancies* in Caſes of this Nature, were requir'd to be very *authentick* and full, (as appears by the following Part of the ſame Conſtitution) which inſiſts, that it ſhall not be accounted as a ſufficient Evidence of the *Vacancy* of a *Benefice*, otherwiſe than either by producing the very Corps of the Incumbent, if dead, or otherwiſe, if living, by his appearing and reſigning in Perſon ; or elſe, in Caſe of his Abſence, it cannot ſo be, it is then to be certify'd by the *Sentence* of the Ordinary in whoſe Dioceſe the Incumbent dy'd, or reſign'd. Or, at leaſt, by the Teſtimonials of a Notary, under an authentick Seal, corroborated alſo by ſome one or more Atteſtations, by an Inſtrument of a publick Nature, or by Affidavits of unexceptionable Witneſſes depoſing hereupon,

† Putà, *Renunciatione*, vel *Judiciali Privatione*.

upon, not only as to *Hear-say* and *Belief*, but as to their own proper Knowledge ; making full and clear Proof, according to the *Strictness as by Law requir'd.* ||

And in Case, if contrary to the several Particulars before set forth in this Constitution, which is of *full Proof first made of a Vacancy*, a Person shall get himself instituted or *intruded*, such Institution shall be *null and void*, and no Right shall arise by it ; tho' after it should happen to appear that the Church *was*, at the Time of such Institution, *actually vacant.* * And

|| De his verò non aliter constare sufficiat, quam per ipsius *Mortui*, vel resignantis, seu *alias Dimittentis* Præsentiam corporalem, aut si absens sit, per Episcopi Diocesani *Sententiam*, in cujus Civitate, vel Diocesi *Mortuus* fuisse, vel aliàs *Dimisisse*, dicetur, aut, saltèm, alterius personæ authenticæ Literas, Sigillo authentico, uno, vel pluribus, consignatas, per Instrumentum publicum, vel per testes juratos idoneos, & omni exceptione majores, a quibus, super hoc, non tantùm de credulitate, sed etiam de scientiâ, secundùm Juris exigentiam, sufficiens, & apertum testimonium deponatur.

* Quod si contra ea qua dicta sunt, quicumque in Ecclesiâ, (de factò) fuerit *Instituus*,
vel

And it goes on, that in Case *Institution* had been so granted, and it after appears that the *first Rector is alive*, he must have *Restitution* and Satisfaction made him. †

The Doctor here is *alive*, has not *resign'd*, nor been judicially *amov'd*, antecedent to Dr. *Shippen's* pretended Presentation: He is well intitled therefore to the Cure of Souls and *Benefice*, 'till judicial Steps (according to Law) are taken to deprive him from each.

And the same Constitution above-mention'd, goes on (in Regard to a
Be.

vel (quod verius est) *intrusus*; *Institutio* talis *invalida* sit, & nullius penitus sit momenti, nec per ipsam cuiquam Jus aliquod acquiratur, etiam si, postmodum forsan, apparet, ipsam Ecclesiam, tempore Institutionis hujusmodi vacavisse.

† Cumq; postmodum de primi Rectoris vita constiterit, eo quod, personaliter veniens, seipsum ostendat, aut alias per authenticas Literas vel Instrumentum publicum, vel per testes idoneos, vivere comprobetur, tam præfatus *Instituens*, quam is qui taliter fuerit *Institutus*, ipsi Rectori ad restitutionem, in integrum, fructuum, damnorum & expensarum, quæ (propter hoc) ipse Rector in urrit, teneatur, altero alterius solutione minime liberando.

Benefice full) that the Bishop who shall institute contrary to such Constitution, shall be suspended from Institution. ||

And if the Usurper persists in Rebellion, besides the Penalties afore inflicted, he shall be depriv'd from all his other Preferments, and be incapable of enjoying that he usurp'd upon, (and which, by the Vice of his Covetousness and Rapine, he had render'd himself unworthy to receive) and shall be utterly incapacitated to hold any other Benefice in that Diocese which (as the Constitution phrases it) he has infected with the Contagion of his Crime. *

And

|| Et, (quia non sufficit pecuniaria Pœna, ubi est spirituale Delictum) Prælatus qui contra hoc Instituerit, nihilominus ab eo Tempore, quò prædicta commiserit, à Collatione, Institutione, seu Præsentatione Beneficiorum quorumlibet, Statuimus manere Suspendum, donec ipsi Rectori Possessio reddatur Ecclesiæ: Adjicientes. ut si postquam de ipsius Rectoris vitâ, superscripto modo, constiteret; Ecclesiâ restituatur eidem.

* Intrusus, si per Rebellionem præstiterit, præter pœnas supra positas, extunc, Omnibus Beneficiis, quæ in eodem Regno obtinet, ipso facto, perpetuò sit privatus, & ad illud quod taliter

And in the following Paragraph of the same Constitution of *Osborn*, is thus declar'd; That it is a Case more to be favour'd, and more tolerable, that a Church or Benefice should be void for some Length of Time, by Reason of the Truth of such *Voidance* not being evidently made appear, than that it should be *adulterated* by a violent or wrongful Possessor, even for a Moment of Time. *

And, in the Gloss of *Lyndewode*, upon the Word [† *Adulterari*] he
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taliter detinuit, quodcumq; vel quomodo-
cumq; vacaverit, perpetuo sit *inhabilis* obti-
nendum, ad quod cupiditatis, & rapinae,
vitio reddidit se indignum; & si quidem
nullum fortassis Beneficium habeat, non so-
lum ad hoc, quod sic habere praesumpserit,
sed ad quodlibet aliud; ut in illa Dioecesi, quam
sceleris sui peste turbavit, ipso facto, au-
thoritate hujus Statuti, se inhabilem esse per-
petuo sciat, & penitus non capace.

* Favorabilius esse, & Tolerabilius existi-
mantes, Ecclesiam, vel Beneficium vacare
diutius, per incognitam veritatem, quam (mo-
mento quocumq;) *Adulterari*, apud violentum,
vel nefarium Possessorem.

† Sponsum proprium Rejiciendo, & ad
aliud, illegitimum, sibi copulando, ac sic
Matrimonium Spirituale, per Contractum,
violando.

describes it to be, as if a proper Spouse or Husband were to be rejected, and another unlawful Mate embrac'd: And for a Violation committed upon the spiritual Marriage of the Incumbent and his Church, by a subsequent Contract.

And as the Bonds of Matrimony cannot be dissolv'd, but by Death, or by Divorce, upon just Grounds, and by judicial Proceedings; so this spiritual Marriage (as it is term'd) between the Incumbent and his Cure, cannot be dissolv'd, until by Death, the Church becomes, as it were, in Widowhood; or by a Separation, made in a formal judicial Manner, by the Hand that join'd them together; which is, the Episcopal Authority, upon Just and Canonical Grounds, by a Sentence of Deprivation.

And the like Caution, as in Case of a living Presentative, is also given (in the latter Part of this Constitution of Othobon) in Case of a living Subject, to the Bishop's Col-
lation, prescribing, under the several

aduata
store.

rat Penalties therein mention'd. ||
 That an Arch-bishop, or Bishop,
 collating *basily*, (even after proba-
 ble Notice or Knowledge (*if not in*
a judicial Way) of a Living beco-
 ming *vacant*) for Fear of Lapse;
 yet, that he shall not give Possession
 till the *Vacancy* is fully inquir'd
 into, and shall evidently appear;
 nor shall the Clerk, till such Time,
 take it.

G²

To

|| Ad hæc, cum Archiepiscopum vel Episcopum, ad quem Ecclesiæ vel Beneficii Collatio spectat, Vacationis noticia probabiliter, aliter quam dictis modis, forte pervenerit, si forsan Beneficium ipsum vel Ecclesiam conferrat, (timens ne per lapsum temporis prædictum sibi fiat) Possessionem tamen ipsius Ecclesiæ vel Beneficii corporalem, priusquam de Vacatione, supradictis modis, confiterit; non tradat, vel tradi faciat, seu consentiat, vel permittat; neque is cui Collatio facta est Possessionem ingredi propriâ, vel alterius cujuscunque Authoritate præsumat: Quod si Archiepiscopus vel Episcopus contrafecerit, prædictis poenis se noverit subjacere: Is vero cui Collatio hujusmodi facta est, si contra præmissa Possessionem acceperit, ipsâ Ecclesiâ seu Beneficio perpetuo se noverit esse privatum, & nihilominus aliis poenis subiaceat supradictis.

To the like Effect (as the precedent Constitution) is that of || *Stratford,*

|| Esurientis avaritiæ, & infra ; præsentis Consilii provisione, statuimus ; quòd quicunque Clerici ad Dignitates, Personatus, Officia, vel Præbendas, aut alia Beneficia Ecclesiastica quæcunque plena, & occupata, de facto, se præsentari, seu ea sibi conferri, per quemcunque de cætero procurantes ; si directè vel indirectè, virtute Brevium, *Quare non admittit*, vel *Quare impedit*, &c. aut similium tacito, in dictis Brevibus, de Beneficiorum Possessoribus, & eis, vocatis, *ritè non amotis* ; contra Episcopos, seu alios in Seculari Curia prosequantur, nisi de causis *Vacationum* præsentiarum ad Ordinariorum mandata inquiri, & Possessores (per Judices Ecclesiasticos competentes) *canonicè primitus amoveri* faciant, *majoris Excommunicationis* sententiam incurrant, ipso Facto ; & (tanquam sic *Excommunicati*) ad Beneficia talia nullatenus admittantur, sed inhabiles ad ea perpetuò censeantur : Si vero, contra hæc, quisquam in *occupato Beneficio instituatur* vel admittatur, de facto, *Institutio*, seu Admissio hujusmodi omni Juris effectu careat ; & quicunque sic *Instituens* vel admittens, jure proprio vel delegato, taliter præsentatum vel collatum in *obtento per alium Beneficio*, (ipsius Possessore sufficienti auctoritate, in foro Ecclesiæ, *sententialitè*, primitus non amoto) ab Officio & Beneficio tam diu noverit se *suspensum*, donec Beneficii Possessori refarciatur (ut convenit) omne damnum ; & in-

ford, in Lyndewode, against Usurpation and Intrusion, whereby it is decreed, That any Clergy-man, procuring a Presentation, or Institution to a Church that is full, without removing the Possessor, in a Canonical Way, shall incur Excommunication and Incapacity; and the Institution shall be null, the Person also instituting shall be suspended; and the Instituted shall be punish'd as an Intruder.

From hence it is to be inferr'd, That no Countenance ought to be given to an *Usurper*, which is *he* who aims at *another's Right* before the *Title is decided*.

We are now come to speak of the *Art* seventh Article of the Allegation, wherein it is set forth,

That Dr. *Welton* is a pious, able, learned, orthodox, and eminent Di-

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vine;

institutus taliter vel admissus, si se, in occupato per alium Beneficio, contra hoc, patiatu induci, censeatur Intrusus, & poenas Intrusionis, in Constitutione Othoboni, [quæ incipit Amoris proprii] contentas, necnon alias, à Canonibus, et sanctis Patribus inflictas, ipse facto, incurrat.

vine; and in his Priestly Duty and edifying Conversation amongst his Flock, has engag'd their Respect and Esteem; and such is his Character.

This must be allow'd of by the other Side; but the adverse Party will object, That the Matter in Controversy is not any Ways tending to affect the *Morals* of the Doctor, so as to put him upon the Justification of his *Character*: But, nevertheless, is it not agreeable to the Nature of the present Case, to set forth his being orthodox, and with what Edification he performs his Priestly *Function*? As also to set forth, as in the eighth Article,

le 8. That Dr. *Welton* has not been guilty of any Fault, whereby to incur Ecclesiastical Censure, or Canonical *Deprivation*, or *Amotion*, nor has *resign'd* his Living.

The seventh Article speaks what the Doctor *is*, and in such a Manner, as if prov'd to be true, is a sufficient Argument to induce an *Ecclesiastical* Court to be very tender in using a Person of so *excellent a Character*,

as

as not to hurry so good a *Shepherd* precipitantly, and without the greatest Deliberation, from his *Flock*; not to suffer him, to be over *hastily* dealt with, before full Examination and Enquiry into the Merits of the *whole* Case, by regular and due Proceedings; and to give him, at least, the common Indulgence that every Person ought to have, which is, that the adverse Party may, *first*, prove his pretended Interest, and that he may have Liberty to defend himself in a Right, which he enjoys by an undoubted Title, against an *Usurpation*; under which Title he ought to sit easy and undisturb'd, until it be legally impeach'd, and (by due Proceedings) set aside, before another *pretended* Title can be set up in Competition.

As the seventh Article, sets forth the Character which (with Justice) becomes him; so the eighth Article urges, (by Way of Reverse) the Character he has hitherto avoided; That he has been guilty of no Crime, so as to incur *Ecclesiastical* Censure, De-

privation, or *Amotion*; and, farther, that he has not *resign'd*.

This evinces, (by mere Consequence) that the *Living* is *not void*, since none of the Circumstances, necessary to make it *so*, occur in this Case.

For *Voidance* is to be describ'd, as happening either by *Death*, *Resignation*, or *Deprivation*.

Here the Church appears to be full, as the Incumbent is *alive*, and (not having *resign'd*) insists on his Right to the Cure of Souls, and Rectory, (by Virtue of *Institution* and *Induction* thereto) and even the *Resignation* of a Benefice, if it be not *spontaneous*, without any Compulsion, without any Consideration or Condition, will not render a *Living void*; nor if it had all the Requisites, of being free, pure, and absolute, 'till it has receiv'd the *Approbation* of the Bishop, the *Living* is *full*. How, even a *voluntary Act* of the Person himself shall *not divest* him,

|| In sacras manus vestras pure, sponte, & absolute resigno.

him, without a great deal of *Strictness* and *Formality* requir'd! And *all that* will not do, unless the *Bishop* thinks fit, and *approves*.

The rest of the *Fact*, (which is laid in this *Article*) is, that *Doctor Welton* has been guilty of no *Crime*, so as to incur *Ecclesiastical Censure*, *Deprivation*, or *Amotion*.

This is certainly very *relevant* and *material*; for if he has not been an *Aggressor*, shall he be *censur'd*, *depriv'd*, or *amov'd*? And until he is prov'd *guilty*, in the *Eye* of the *Law*, he is presum'd *innocent*. And until he is regularly and canonically, by due *Steps* and *Proceedings*, by *Sentence* *Ecclesiastical*, *depriv'd* and *amov'd*, the *Benefice* is full, and he enjoys the *Cure* of *Souls*, and *Living*, by *Virtue* of the *yet uncancell'd* *Right* of his *Institution* and *Induction*.

Hitherto, the *Allegation* or *Plea* on *Dr. Welton's* *Behalf*, has been engag'd in supporting and establishing the *Right* and *Title* under which the *Doctor* claims; and to shew, that until the same be regularly

larly impeach'd, and set aside, upon just Grounds and Foundations, in a *judicial* Manner, by due Method of Proceeding, and by *Sentence* of a proper Court, he ought to enjoy *Possession* of the *Spiritualty* and Cure of Souls, which he was invested in by Virtue of *Institution*; and the *Possession* of the *Temporalities* and *Freehold*, which he holds by Virtue of *Induction*. And that it is incumbent on the other Side, to shew *Cause* why he should be *depriv'd* of the one, or *ousted* of the other.

And the *Cause* which is assign'd and insisted upon on the other Side, is, their *Crown-Office* Certificate, which they call, *A Conviction of Popish Recusancy, for not taking the Oaths*. And it is upon this Doctor *Skippen* founds his *Pretences* of the Living being *void*: For thus his own Proctor alledg'd, in an Act of Court, || That the Church of *White-*

April 21,
1716.

|| *Rouse* allegavit, dictam Ecclesiam de *White-Chapel* vacuam esse de Persona *Richardi Welton*; & in *Subsidium* Allegationis suæ, exhibuit *Certificatorium*, ex *Officio Coronæ* extractum.

White-Chapel was void of the Person of *Dr. Welton*; and, as a *Subsidiary* or assistant *Proof* thereof, exhibited a *Certificate* extracted out of the *Crown-Office*. Now, if this *Certificate*, or *Conviction* of Popish Recusancy, is *invalidated*, (upon which the Plea, given on the other Side, is founded) this will altogether frustrate the Pretences of *Dr. Skippen*: For if his Foundation is ill laid, he must fail in his Design, and his Superstructure will fall of Course.

In order, therefore, to make this *Certificate*, or *Conviction* of Popish Recusancy, appear to be of no Manner of Efficacy, Use, or Avail whatsoever, as to the Case in Hand, even according to the very *Act* of Parliament it self, it is alledg'd, on Behalf of *Dr. Welton*, in the ninth Article of his Allegation, That,

Whereas a Copy of a pretended Article 9.
Certificate of a pretended *Conviction*, is exhibited, it is a private Writing, ought not by Law to be admitted,

mitted, was illegally, obtain'd and made, is irregular, and of none (at least sufficient) Effect in Law, to found a Deprivation or *Amotion* upon; it is not authentick, nor are the Contents true.

This Writing (exhibited on Dr. *Shippen's* Behalf) is alledg'd to be a true Copy of the *Record* or *Conviction* of Dr. *Welton*, (now remaining, and FIL'D upon Record, in the Crown-Office.) But if this be not *regular*, (according to the late Act of Parliament) then it is just nothing at all; but were it (for Argument Sake *only*) allow'd to be *regular*, it will be made appear, that even *then*, in all its Fulness of Strength, it is *not* a sufficient Foundation, or Reason, whereupon *Deprivation* or *Amotion* can be grounded.

The Words of the Act of Parliament run thus :

And to the Intent and Purpose,
that no Person may avoid taking
the

the severall Oaths in the Act particularly mention'd, upon any Presence whatsoever, be it farther enacted by the Authority aforesaid, that it shall and may be lawful unto and for two or more Justices of the Peace, or any other such Person or Persons who shall be by his Majesty for that Purpose specially appointed, by Order in the Privy Council, or by Commission under the Great Seal, by Writing under their Hands and Seals, to summon any Person to appear before them at a certain Day and Time therein to be appointed, to take the said Oaths: Which said Summons shall be serv'd upon such Person, or left at his Dwelling-house, or usual Place of Abode, with one of the Family there: And if such Person, who shall be so summon'd, neglects or refuses to appear according to such Summons, that then, upon due Proof to be made upon Oath of the serving the said Summons, which Oath such Justices, or any other Person or Persons specially to be appointed, as aforesaid, are hereby enabled to administer, such Justices, or any other Person or Persons specially to be ap-

appointed, as aforesaid, are hereby requir'd to certify the same to the next General Quarter-Sessions of the Peace, to be holden for such County, Riding, Liberty, City, Borough, Town-Corporate, or Place, there to be enter'd upon the Rolls of the said Sessions: And if such Person, who shall be so summoned to take the Oaths, as aforesaid, shall neglect or refuse to appear and take the said Oaths at the said General Quarter-Sessions, the Names of the Persons so certify'd being publicly read at the first Meeting of the said Sessions, that then, and in such Case, such person shall be taken, esteem'd, and adjudg'd a Popish Recusant Convict, and as such, to forfeit, and be proceeded against; as if such Person had actually refus'd to take the said Oaths; and the same shall be from thence certify'd by the Clerk of the Peace of such County, Riding, Liberty, City, Borough, Town-Corporate, or Place, into his Majesty's High Court of Chancery, or King's-Bench, Court of Session, or Court of Justiciary in Scotland, there to be recorded amongst the Rolls of the said Courts, in a Roll or Rolls there to

to be provided, and kept for that Purpose only.

The Nullities and Absurdities of this Certificate (exhibited) have been mention'd before; and that it is altogether *incongruous* with the Act of Parliament, will plain enough appear by what has been observ'd already; and by some few farther Remarks upon the Matter.

OBJECTIONS to the Proceedings, in relation to the obtaining of the Certificate.

A First, As to the Precipitancy.

THE Summons, dated on St. Michael the Archangel's Day.

Serv'd the very next Day.

Returnable the next Day after that.

The Doctor then near an hundred Miles from his Habitation.

The

I.

II.

III.

IV.

V. The Certificate of the Justices, dated *the very Day prefix'd* the Doctor to take the Oaths.

VI. That the Day, *so prefix'd*, was that wherein Ministers (of the Gospel) are preparing to compose their Sermons, for the Instruction and Edification of the *Flock* committed to their Charge.

VII. * That no Man is compellable to an Impossibility ; 'tis notorious that the Doctor could not (*possibly*) have Notice of the *Summons*, (at the great Distance he was) so as to attend at the Time and Place thereby requir'd. And it would be an equal Opportunity, (for any one having *sinister* Ends) to procure any Person (even the *Bishop* himself, happening to be upon Visitation, or other Avocation, in remote Parts of his Diocese, or elsewhere *absent*) to be summon'd, (in his Absence) and obtain a *Conviction*, before he could have Notice of, or be *pry* to, such *Summons*.

Secondly,

VI

* Nemo tenetur ad impossibile.

Secondly, As to the *Absurdities*
and *Errors* of all the Pro-
ceedings certify'd by the
Clerk of the Peace.

I.
“ *Ego Samuel Reynolds, Ar', Cle-*
“ *ricus Pacis Com' Essex' prad' Vir-*
“ *tute cujusdam Actus Parliamenti,*
“ *Anno secundo Georgii Regis, &c.*
“ *humillimè certifico, Quod ad Ge-*
“ *neral' Quarterial' Session' Pacis,*
“ *&c.*

This imports as if he was Clerk
of the Peace by an Act of Parliament
in that Year; whereas it should
have been,

Ego Samuel Reynolds, Ar', Clericus
Pacis Com' Essex' prad', humillimè
certifico, Virtute cujusdam Actus Par-
liamenti, &c.

II.
His *Certification* is made, directed
thus :

“ *Serenissimo Domino Regi, in*
“ *Cur' ipsius Domini Regis, coram ipso*
“ *Rege apud Westm' in Com' Midd'.*

H

Whereas

Whereas it ought to be certify'd into the Court of *Chancery*, or *King's Bench*, the Act thus requiring : And the same shall be from thence certify'd by the Clerk of the Peace of such County, &c. into his Majesty's High Court of Chancery, or King's Bench, there to be recorded amongst the Rolls of the said Courts, in a Roll or Rolls there to be provided and kept for that Purpose only.

It should therefore have been;

Serenissimo Domino Regi in *Suprema Curia Cancellaria*; or, in *Curia ipsius Domini Regis ad Placita, coram ipso Rege, &c.*

Or else, what Court is describ'd thereby? For all the Courts at *Westminster* are the *King's Courts*; and the *King's Bench* is always distinguish'd, and call'd *Curia Domini Regis ad Placita, coram ipso Rege, &c.*

III. The Certificate runs thus: "*Certifico, Quod ad General' Quarterial' Session' Pacis dicti Domini Regis,*

“ *Regis, tent’ pro Com’ Essex’ præd’*,
 “ *apud Chelmsford in Com’ Essex’*
 “ *præd’, per Adjournament, &c.*
 “ *Die Mercurii, &c. 5^o Octobris,*
 “ *&c. coram Nath’ Meade, &c.*
 “ *Justiciar’, &c. Fisher Tench,*
 “ *Bar’, & Robertus Dennett, Ar’,*
 “ *duo Justiciar’, &c. certificave-*
 “ *runt in eandem generalem, quar-*
 “ *terial’ Session’ Pacis, tent’ per Ad-*
 “ *journ’, ut præfertur, &c.*

Whereas the Act requires the Re-
 turn to be made to the *next General*
Quarter-Sessions. [Such Justices,
 &c. are hereby requir’d to certify
 the same to the next general Quarter-
 Sessions of the Peace, to be holden
 for such County.] And the Act ex-
 pressly directs the Name of the Per-
 son to be return’d, and certify’d, to
 be publicly return’d at the *first*
Meeting of such Sessions. [And if
 such Person, who shall be so sum-
 mon’d to take the said Oaths as
 aforesaid, shall neglect or refuse to
 appear, and take the said Oaths,
 at the said General Quarter-Sessions,
 the Names of the Persons so cer-
 tify’d, being publicly read at the

FIRST MEETING of the said Sessions, That then, and in such Case, such Person shall be taken, esteem'd, and adjudg'd, a Popish Recusant Convict, and, as such, to forfeit, and be proceeded against, as if such Person had actually refus'd to take the said Oaths.] The Certification, therefore, [*per Adjournament*] plainly denotes, that it was not the *First Meeting*: *Vide fol. 325 of the Act it self.*

- V. The Clerk of the Peace, in the Close of his Certificate, says, "*Et*
 "*ulterius certifico, Quod nomen*
 "*præd' Richardi Welton, in Certi-*
 "*ficat' præd' mentionat', ad prædict'*
 "*general' quarterial' Session' Pacis,*
 "*tent' per Adjournament dicto quin-*
 "*to Die Octobris, Anno supradict'o,*
 "*apud Chelmsford præd', publicè*
 "*lect' fuit; & quod idem Richar-*
 "*dus Welton ad general' quarteri-*
 "*al' Session' Pacis præd', præstare*
 "*Sacramenta prædict' neglexit.*

Whereas,

Whereas the Act it self expressly directs, That the Name of the Person so certify'd, be *publicly read at the first Meeting* of the Sessions; and the Return, or Certificate, (now in the *Crown-Office*) by the Clerk of the Peace, (if at all there, as not duly describing the Court of *King's Bench*) is as from the *Adjournment of the Sessions*.

And thus it appears that this Certificate is *irregular*, in not being duly obtain'd in *Point of Time*: In Regard also to the *Absurdities, Errors, and Inconsistencies* in it: And as the Steps therein taken, are *not* conformable to the Act of Parliament, upon which the *Validity* of such *Certification* is to be founded.

And as this *Instrument* is introduc'd by Dr. Shippen, with an Intent to prove a *Conviction* of Popish Recusancy, *according to the late Act of Parliament*, and in order to be made Use of, to enforce the Execution of *the penal Part of that Act*, upon Account of such *Conviction*, it ought, therefore, in every Particu-

lar, to be made agreeable to the *Direction* and express Meaning of the Words of *that Act*, under which it is to receive its Being and Force. And unless it appears to be a *due and legal Conviction* of Popish Recusancy, conformable to the Purport of that *Act*, it is of *no* Manner of Efficacy ; has no Foundation for a *Penalty* to ensue thereupon, under the Authority of *that Act*.

Having observ'd, *as to the Thing it self*, how *untimely* 'twas obtain'd ! how *inconsistent* it is in its own Language ! how *absurd* ! how *erroneous* ! and that it is not fram'd agreeable to the *Act* of Parliament, it is not amiss here to mention what has been alledg'd *in its Behalf* on Dr. *Shippen's* Side, and to shew, that what has been *so* alledg'd *for it*, is altogether *false*, even by the Depositions of his *own* Witnesses.

To come to this Point, it is to be noted, That the *Fact* laid on Behalf of Dr. *Shippen*, in this Cause, against Dr. *Welton*, in order to *substantiate* this *Certificate*, which is call'd a *Conviction*, was by an *Allegation*
made

made in an *Aſt* of Court, upon the third Seſſion of *Trinity* Term, by Dr. *Skippen's* Proctor, " That the ¹⁶ *Exhibite*, by him given in, and ¹⁷ admitted in this Cauſe, is a true Copy of the *Record* or *Conviction* of the ſaid Dr. *Welton*, now remaining and *fil'd* upon *Record* in the *Crown-Office* : And, That Dr. *Richard Welton*, therein mention'd, and Dr. *Richard Welton*, Party in this Suit, was and is the ſame Perſon, and not diſerſe.

Now let us ſee what Sort of *Proof* has been made as to this *Exhibite*, That it is a true Copy of the *Record* or *Conviction* of Dr. *Welton*, now remaining and *fil'd* upon *Record* in the *Crown-Office*.

To prove this Suggestion, there are two *Witneſſes* produc'd, and examin'd, whoſe *Depoſitions* are as follow :

The DEPOSITIONS.

*Skippen contra D'rem Welton } 9^o Julii
 use. Oughton. 1716, su-
 per Allegatione per
 Rouse datâ.*

*Robertus Wintour, de Novo
 Hospitio in Com' Midd'
 Gen', ad quod spectavit per
 20 annos, ortus apud Dym-
 mock in Com' Gloucestrîæ,
 Etatis 55 Annorum, aut
 eò circiter, Testis, &c.*


AD Allegationem apud Acta in
 hac Causâ datam & admissam,
 & ad Exhibitum in eadem mentiona-
 tum deponit & dicit, That he is a
 Stranger to Dr. Skippen and Dr.
 Welton, Parties in this Cause: And
 this Deponent saith, That he, this
 Deponent, now is, and for above
 ten Years last past hath been, *one of
 the Clerks of his Majesty's Crown-
 Office of the King's Bench, and the
 County of Essex* is one of the Coun-
 ties

ties within *his Division*, in the said Office; and this Deponent having now seen and perus'd the *Exhibite* now exhibited, saith, That the same is a true *Copy of a Certificate*, transmitted from *Samuel Reynolds, Esq; Clerk of the Peace* for the said County of *Essex*, and which *Certificate* now remains in this Deponent's Custody, as Clerk of the said Office for the said County, *which is now enter'd on a Roll in the said Office*, by Directions from the Clerk of the Crown of the King's Bench, from whom he receiv'd it. And this Deponent knows the said *Exhibite* to be a true Copy of the said *Certificate*; by Reason he twice examin'd the same with the said *Certificate*; and in Testimony of the Truth thereof, with his own Hand wrote these Words at the Bottom of the said *Exhibite*, (*viz.*) *Exam' per me Rob' Wintour, unum Clericor' in Officio Coronas, 27^o Junii, Anno Dom' 1716*; which he having now perus'd, on the Bottom of the said *Exhibite*, saith, is of his own writing, and thereby knows that the *Exhibite* now exhibited, is
the

the very same by him predepos'd of
& *aliter nescit deponere.*

Idem ad Interrogatoria.

Ad 1^m respondet, That he examin'd the Exhibite predepos'd of, with the *Certificate* predepos'd of; that he *never saw the Rolls or Records* in the County of *Essex*, from whence the same was return'd and certify'd; nor does he know whether the same was return'd and certify'd as the *Law* directs; nor whether the said Exhibite be a true Copy from the *Rolls of Sessions*; but knows it to be a true Copy of the *Certificate* predepos'd of, & *aliter nescit.*

 *Ad 2^m,* That the *Certificate* predepos'd of, is inroll'd in the said *Crown-Office*, BUT THE ROLL IS NOT YET FIL'D; nor does it contain any other Matter, Thing, or Proceedings, than what is contain'd in the said *Certificate*; *that there hath not been any Citation, Summons, Scire facias, or other Proceedings issued thereon,* & *aliter nescit respondere.*

Ad

Ad 3^m, That THERE IS NO JUDGMENT OF CONVICTION ENTER'D ON THE SAID ROLL, nor any Number to the said Roll, & *aliter nescit respondere*:

Ad 4^m, That he examin'd the Copy exhibited, with the said Certificate, the 27th of June last, at the Crown-Office, with Mr. *Edward Harnage*, his Fellow-Witness, by reading the original Certificate, which he held in his Hand to him, and his then reading and holding in his Hand the Copy exhibited, and by this Respondent's then holding the said Copy in his Hand, and reading the said Copy, and the said Mr. *Harnage* then holding in his Hand and reading the said original Certificate, & *aliter nescit*.

Ad 5^m, That the Copy exhibited was examin'd with the original Certificate deliver'd to him, by *Simon Harcourt*, Esq; Clerk of the Crown, to be by him, this Respondent, in-roll'd, as Clerk of the said Office in
the

the County of *Essex* ; That the said original Certificate, nor the Roll whereon the same is wrote, hath not at this Time any Style or Title, as this Respondent remembers ; That the original Certificate, predepos'd of, being wrote on Parchment, contains nothing else than what is wrote in the Copy exhibited in this Cause, saving an Entry, or another Certificate against another Person, whose Name he remembers not, to the like Purpose with the said Certificate ; that this Respondent hath the said Certificate in his Office ; and the same is wrote in Secretary-Hand, & *aliter referendo se ad Exhibitum prædictum nescit respondere.*

Ad 6^m, That the said original Certificate is wrote in a Secretary-Hand ; and the Copy exhibited is wrote in a Secretary or Ingrossing Hand, & *aliter nescit.*

Ad 7^m, Non concernit eum.

Ad 8^m, That he can, for the Reasons predepos'd of, positively swear, that the Copy exhibited, is, *verbatim,*

tim, a true Copy of the said original Certificate, wherewith he examin'd the same; and may be also farther positive thereof, by Reason, besides the Times predepos'd, he hath two or three Times examin'd the same; and he does verily believe, in his Conscience, that the other Person, who examin'd the same with him, did not, in his reading either the Original or Copy, add or omit any Thing in either of them; and that he did not, in his reading of the said Original or Copy, omit, let slip, or pass by, neglect, or not observe any Thing in either of them: And this Respondent is certain, that himself did not, in his reading the said Original or Copy, add or omit any Thing in either of them, or omit, let slip, pass by, neglect, or not observe any Thing in either of them, & *aliter nescit*.

Ad 9^m, That there is no Indorsement on the Back of the said original Certificate, saving these Words, *By the Clerk of the Crown, receiv'd*
 11 February, 1715, or to that Effect,

(110)
fect, which is written in Court-hand;
that the said Indorsment is not
copy'd on the Certificate exhibited,
& *aliter nescit*.

Ad 10^m, Non concernit eum.

Ad 11^m, That he doth not remember that he ever declar'd himself, or heard others declare to the Effect interrogate, but this Respondent doth now declare, That the original Certificate by him predepos'd of, is no otherwise of Record, than as it remains in the Custody of this Respondent, and by him inroll'd, as a Clerk of the said Office, & aliter nescit, nec audivit uti meminit.

Ad 12^m, That he cannot depose, That Dr. Richard Welton, Party in this Cause, and Dr. Richard Welton, mention'd in the said Certificate, is one and the same Person, and not diverse, & aliter nescit.

Ad 13^m, Reddit veras Causas Scientiæ suæ, ut supra.

Robert Wintour.

10 Julii, 1716.

Edvardus Harnage, Gen^r, Clericus Magistri Edvardi Alexander *hujus Curia Registrarii, cujus stetit Clericus per 5 annos & ultra, ortus apud Upton super Sabrinam in Com' Wigornia, Etatis sua 22 annorum & ultra, Testis, &c.*

AD dictam Allegationem apud Acta, in hac Causa datam & admissam, & Exhibitum in eadem mentionatum, deponit & dicit, That he, this Deponent, on the 26th, as also on the 27th Day of June last, did, with Mr. Robert Wintour, his Fellow-Witness, carefully and diligently examine the Exhibite now shew'd this Deponent, and by him perus'd, with a Piece of Parchment, being a Certificate remaining in the Crown-Office in the Temple, London, of which the said Robert Wintour then had the Custody ; and told this Deponent, That he was one of the Clerks of the said Office, and there-
by

by this Deponent knows that the said Exhibite is a true Copy of the said Certificate; and this Deponent verily believes that Dr. Richard Welton, mention'd in the said Exhibite, and Dr. Richard Welton, whom he hath known for some Years, and one of the Parties in this Cause, is the same Person, and not diverse, & aliter nescit deponere.

Idem ad Interrogatoria.

Ad 1^m, That he did examine the Exhibite with the Certificate predepos'd of, which he saw in the said Crown-Office; that he hath not seen the Rolls' or Records in the County of Essex, from whence such Certificate is return'd; and he knoweth not of any Proceedings had or made upon such Certificate, & aliter, nescit respondere.

Ad 2^m, That the said Robert Wintour told this Respondent, That the said Certificate was enter'd upon a Roll, which remain'd LOOSE in the said Office; that on the said Certificate's

cate remaining in the said Office, there are some other Person or Persons also certify'd, in like Manner with Dr. *Welton*, and such begins at the End of what relates to Dr. *Welton* in such Certificate; & *aliter nescit respondere*.

Ad 3^m, That this Respondent knows not of any Judgment or Conviction enter'd on the said Certificate, or the Roll thereof; & aliter nescit respondere.

Ad 4^m, That on the 26th of June last, this Respondent examin'd the Copy exhibited with the said Certificate, by his the said Robert Wintour's holding and reading aloud the said Certificate to this Respondent, who then held and read to himself the said Copy. On the 27th of June last the said Robert Wintour aloud read the said Copy, which he this Respondent held in his Hand, and to himself read the said Certificate; aliter referendo se ad predeposita nescit respondere.

Ad 5^m, That he examin'd the said Exhibite with the Certificate predepos'd of, which the said *Robert Wintour* told this Respondent was return'd to the *Crown-Office*, from the Clerk of the Peace for the County of *Essex*; that he knows not the Style and Title of the Roll whereon the same is enter'd; that some other Person or Persons were also return'd in the said Certificate; besides which, he knows of no other Memorial or Entry on such Certificate; that the said Certificate was then in the Custody of the said *Robert Wintour*, and was wrote on Parchment in a Set Hand; & *aliter nescit respondere*.

Ad 6^m, That the said Certificate wherewith the Respondent examin'd the said Exhibite, was wrote with a Sort of Secretary or Set Hand, to his best Remembrance; and that the said Exhibite is wrote in an Ingrossing Hand; & *aliter nescit respondere*.

Ad 7^m, That this Respondent does not readily understand Court-Hand, nor its Alphabet, Character, Elements,

Elements, and usual Abbreviations; and that he cannot write, nor can he readily and exactly read or understand the same, or the Letters thereof, or Abbreviations therein us'd; that he hath never been us'd to examine Writings in Court-Hand; and there are several Letters, Characters, Elements, and Abbreviations in Court-Hand, which he is not acquainted with; *et aliter nescit.*

Ad 8^m, That he does verily believe in his Conscience, the Copy exhibited is a true Copy, *verbatim*, of the said Certificate wherewith he examin'd it, because he was very careful and exact in his Examination thereof: And this Respondent does also verily believe in his Conscience, that the said Mr. *Wintour* did not, in his reading either the said Certificate or Copy exhibited, add or omit any Thing in either of them: And this Respondent being also very careful and exact in his Examination, and the said Mr. *Wintour* reading very slow, this

Deponent doth verily believe in his Conscience, that he himself, in his reading the said Certificate and Copy exhibited, did not omit any Thing, or let slip, pass by, neglect, or not observe any Thing in either of them; *et aliter nescit*:

Ad 9^m, That he did not take any Notice, whether there was any Indorsment on the Back of the said Certificate or not; nor does he remember any; and this Respondent made no Examination of any Indorsment; *et aliter nescit respondere*.

Ad 10^m, That he did not see any Indorsment; & *aliter respondet negativè*.

Ad 11, That the said Robert Wintour told this Respondent, that the said Certificate was not Fil'd, but whether it were to be esteem'd as a Record, as it then lay, he could not tell; but if it were Fil'd, it would then become a Record, or to that Effect; & *aliter respondet negativè, & nescit*.

Ad

Ad 12^m, Non concernit eum.

Ad 13^m, Reddit veras Causas Scientiæ suæ, ut supra.

Ed. Harnage.

Having now accounted for Dr. Shippen's Plea, from the Mouths of his own Witnesses, it is plain enough to be gather'd, even from their own Words and Depositions upon Oath, That Dr. Shippen has fail'd in his intended Proof of his Allegation, (*which says*) " That the
" *Exhibite* (otherwisecall'd a *Certifi-*
" *cate*) by him given in, and admit-
" ed in this Cause, is a true Copy
" of the *Record* or *Conviction* of Dr.
" *Welton*, now remaining, and *Fil'd*
" upon *Record* in the Crown-Office.

Dr. Shippen has undertaken to prove it to be a Copy of a *Record*; which, in this Case, cannot be without a *Conviction*. He has undertaken to prove it a Copy of a *Conviction*; which, in this Case, cannot be without a *Record*; and,

in the Event, he has prov'd it to be neither.

For Example : *Wintour* deposes, he is one of the *Clerks of the Crown-Office* of the *King's-Bench*, and the County of *Essex* is one of the Counties in his Division ; and says, the *Exhibite* is a true Copy of a *Certificate* transmitted from *Samuel Reynolds*, Clerk of the Peace for the County of *Essex* ; and which *Certificate* now remains in his Custody ; and which is now enter'd on a *Roll* in the said Office, by *Direction* from the Clerk of the Crown, of the *King's-Bench*, from whom he receiv'd it : That he knows it to be a true Copy of the *Certificate*, by Reason he twice examin'd it with the *Certificate* ; and thereupon wrote the *Examinatur* upon it.

Harnage deposes, That on the 26th and 27th of *June* last, he examin'd the *Exhibite* with *Wintour*, with a *Certificate* remaining in the
Crown-

Crown-Office; and that it is a true Copy of that *Certificate*.

This, only, proves the *Exhibite* to be a Copy of the *Certificate* transmitted from the Clerk of the Peace.

Whereas the *Act of Parliament directs*, " That upon due Proof
 " made upon Oath of the serving the
 " Summons, the Justices are re-
 " quir'd to *certify* the same to the
 " next general *Quarter-Sessions* of
 " the Peace, to be holden for such
 " County, *there to be enter'd upon*
 " the *Rolls* of the said *Sessions*.
 Such *Entry* ought therefore to be made, which is not yet prov'd to be so done; and if it were so enter'd upon the *Rolls* there, then that *Entry* is the *Original*, and an authentick Copy of that *Entry* upon the *Rolls* there, ought to be produc'd and prov'd; otherwise, this appears to be a Copy only of a *Certificate* made from thence, which is, in Strictness, no more than a Copy (as it were) of a Copy, and not an *authentick* Transcript from the very *Original*; which *Original* is, or ought to be, enter'd (as the

Act says) upon the *Rolls of the Sessions* ; but if this is not so done, (*as it is not prov'd to be*) then the Tenor or Directions of the *Act*, do not appear, in this Particular, to have been comply'd with ; and it is an *Error* in the *first Step*.

And it *plainly* appears, that there is no *Proof* made of any such *Entry* upon the *Session-Rolls*, as requir'd by the *Act of Parliament*, by Dr. *Skippen's* own Witnesses, upon their Cross-Examination, in their Answer to the first Interrogatory administer'd on Behalf of Dr. *Welton*, which runs thus :

inter-
tory. Let each Witness be interroga-
ted : Did you examine any, and what *Certificate* of a Summons ? (*suppos'd to be return'd from the Quarter-Sessions of the County of Essex*) Is the same a true *Transcript* from the *Rolls or Records* of the said *Sessions* ? Was the same duly return'd and *certify'd* in such Manner as the Law directs ? Have you seen the said *Rolls or Records* in the

the County of *Essex*, from whence the same was so pretended to be return'd and *certify'd*? And is the same a true Copy thereof? Do you know whether any farther, and what Proceedings are, or have been made thereupon, than what are mention'd in the said pretended *Certificate*?

To which, *Wintour* :

That he examin'd the *Exhibite* predepos'd of with the *Certificate* predepos'd ; that he never saw the *Rolls* or *Records* in the County of *Essex*, from whence the same was return'd and *certify'd* ; nor does he know whether the same was return'd and *certify'd* as the *Law* directs ; nor whether the said *Exhibite* be a true Copy from the *Rolls* of *Sessions*, but knows it to be a true Copy of the *Certificate* depos'd of. *Et aliter nescit* ; which [*aliter nescit*] is his Answer to the last Part of the Interrogatory, which asks, Do you know whether any farther, or what Proceedings are, or have been made thereupon, (meaning upon the *Certificate*) than what
are

are mention'd in the said pretended Certificate ? His Answer is, [*aliter nescit ;*] that is as much as if he had said, He *knows* of no farther *Proceedings* made thereupon ; of which last *Negative*, Part of his Answer to this Interrogatory, farther Use shall be made *by and by*.

Harnage, to the same Interrogatory, says, That he did examine the *Exhibite* with the *Certificate* predepos'd of ; (which he saw in the Crown-Office) that he hath not seen the *Rolls* or *Records* in the County of *Essex*, from whence such *Certificate* is return'd ; and he knoweth not of any *Proceedings* had or made upon such *Certificate*.

So that (as has been premis'd) this is only a *Copy* of a *Copy*, or a *Copy* of a *Certificate*, and not the *Copy* of a *Record*, or *Conviction* of *Dr. Welton*, (as it is alledg'd to be) now remaining, and *Fil'd* upon *Record* in the Crown-Office.

The *first* Paragraph of their Allegation [That it is a true *Copy* of a *Record* or *Conviction*] is plainly
con-

confuted: And the other Part of it is as false as the former, if we return to their own Witnesses, in Relation to such *Conviction*, which they alledge to be *Fil'd upon Record* in the Crown-Office.

It was very necessary and material, indeed, for them to alledge it to be *Fil'd upon Record* in the Crown-Office, because the Words of the Act do require thus: “ And
 “ the same shall be from thence
 “ *certify'd* by the Clerk of the
 “ Peace of such County, &c. into
 “ his Majesty's High Court of
 “ Chancery, or *King's-Bench*, there
 “ to be *Recorded* amongst the *Rolls*
 “ of the said Courts, in a Roll or
 “ *Rolls* there to be provided and
 “ kept for that Purpose only. And
 without proving of this indeed to be so *recorded*, (as the Act requires) they will be altogether deficient in their Purpose, if it is *no Record*.

And that they have been altogether *deficient in proving of this* to be a *Record*, is very manifest, from the Answer of their own Witnesses,

nesses, to Dr. *Welton's* second Interrogatory, which puts the Question *Home* to them, as to that Point, in the following Manner :

Inter- Let each Witness be interroga-
gatory, ted : Is the said pretended *Certificate* inroll'd, enter'd, or *recorded*, in his Majesty's Court of *King's-Bench*, in any *Roll* or *Record* kept for that Purpose ? And in what Term is the said *Roll Fil'd* ? Does it contain any other Matter, Thing, or Proceeding, than what is contain'd in the said pretended *Certificate* ? Hath there been any *Citation*, *Summons*, *Scire Facias*, or other *Proceedings*, issu'd thereon ? And what have been such Proceedings ? Set forth the same distinctly.

Wintour, the Clerk of the Crown, in answer to this, says, That the *Certificate* predepos'd of, is *inroll'd* in the said Crown-Office, but the *Roll is not yet Fil'd* ; nor does it contain any other Matter, Thing, or Proceeding, than what is contain'd in the said *Certificate* : That there

there has not been any *Citation*,
Summons, *Scire Facias*, or other
Proceedings, issu'd thereon ; *et*
aliter nescit respondere.

Harnage, to this, says,

Wintour told him the *Certificate*
 was enter'd upon a *Roll*, which re-
 main'd *Loose* in the said *Office*.

Thus, being upon a *Loose Roll*, not
Fil'd, no *Scire Facias*, &c. they
 plainly prove it to be no *Record*.

Besides, *Wintour*, the Clerk of
 the Crown, in his Answer to the
 third Interrogatory, says thus :
 " That there is no Judgment of
 " Conviction enter'd on the said *Roll*.
 And *Harnage* says the same. So
 that whereas they would fain have
 this to be a *Record*, and a *Conviction*,
 (according to their *Allegation*) it
 is not prov'd to be either.

And (in Answer to the 11th In-
 terrogatory) *Wintour* says, " This
 " Respondent doth now declare,
 " that the original *Certificate* (by
 " him predepos'd of) is no other-
 " wise of *Record*, than as it remains
 " in the *Custody* of this Respondent,
 " and

“ and by him *inroll'd*, as Clerk of
 “ the said Office.

And *Harnage* (to the same interrogatory) answers thus : “ That
 “ the said *Robert Windour* told this
 “ Respondent, that the said *Certifi-*
 “ *cate was not Fil'd* ; but whether
 “ it were to be esteem'd as a *Record*
 “ or not, as it then lay, he could
 “ not tell ; but *if* it were *Fil'd*, it
 “ would then become a *Record*.

Thus it appears to have been irregularly obtain'd, (as is said in *Dr. Welton's Allegation*;) to be no *Record*, not being *Fil'd* according to the usual *Form* and *Proceedings* that are essential, and absolutely necessary for the making of (*what is call'd*) a *Record* according to *Law*, and without which, it is (what we call) * a *private Writing*.

Thus may *Dr. Skippen* be said *deficere in Probatione*, not having prov'd his own *Allegation*, i. e. *that there is a Conviction Fil'd upon Record* ; and no Sentence can be justly given,

* *Privata Scriptura.*

given, but † according to what is *alleg'd* in a Cause, and accordingly *prov'd*.

And shall this *precipitant Irregularity*! this *Copy of a Copy*! *Record* and *no Record*! *not Fil'd*! and of *no Validity*! become a *Foundation* for a Pretence to be set up in Opposition to the *Episcopal Institution* and *Induction*? And to carry with it a *Lay-Deprivation*, without *Inquiry* made by the *Bishop*, without *Sentence of Deprivation*, or *Amotion*.

Thus have the Steps been *wonderous* hasty in this Affair. The Presentation of *Dr. Shippen* is founded upon an || *Amotion* before *Deprivation* or *Amotion* obtain'd; and a *Certificate* is call'd a *Conviction* and a *Record*, before 'tis *Fil'd* and made so.

Whereas, a Person cannot be said to be a *Popish Recusant* Convict, 'till *due Proceedings* are had against him by Way of *Information* or *Indictment*, and *Judgment* given there-
on,

† Secundum Allegata & Probata.

|| Per Amotionem.

on; which compleats the *Conviction*: Which is then to be *Fil'd*, and thereby becomes a *Record*.

And in Case the *Doctor* was (by due Method of Proceedings) actually declar'd to be a *Recusant Convict* upon Record, the *Penalties* of *Recusants* are mention'd in many *Acts* of Parliament, which Penalties he might be liable to; *but what Act says a Recusant Convict shall be depriv'd of his Living?*

And to shew that there is *none*, it will be proper to insert, The *Sentiments* and *Opinion* of a Common Law Lawyer, upon the several Acts or Penal Laws, in Relation to this Case, *viz.* That

I *Eliz. Cap. 1,*

Is an Act restoring to the Crown the ancient Jurisdiction over the Estate, Ecclesiastical and Spiritual, and abolishing all foreign Powers repugnant to the same.

Hereby, and in many other Cases, the King is *Persona mixta, et unita cum Sacerdotibus*: Yet his Ecclesiastical Judges

Judges must not meddle in Temporal Causes or Suits, nor draw the Property of Subjects (determinable by Common Law) *ad aliud Examen*, without offending *contra Coronam, & Dignitatem Regiam*. And a Prohibition not only lies, but the Ecclesiastical Judge (if the Cause originally belongs to the Common Law) incurs a *Pramunire*, as depriving the Subject of his Birth-right, Co. 3. Inst. 120. Co. 12, 37, 38, 39, 40.

And regularly by the Common Law, *Debet quisquis juri subjacere ubi deliquit*. Dyer, 6 & 7 Eliz. 234. Co. 3. Inst. 34.

5 Eliz. Cap. 1,

Is the Act for the Assurance of the Queen's Majesty's Royal Power over all States and Subjects within her Dominions.

23 Eliz. Cap. 1,

Is the Act to retain the Queen's Majesty's Subjects in their due Obedience.

By this Act, Sect. 5, is the 20^l. a Month for not coming to Church;

K

and

and that over and above the 12d. for each *Sunday* and *Holy-Day*, by another Statute 1^o. *bujus Regina*, for Uniformity of Common-Prayer, &c. (*the Party being thereof lawfully convicted, &c.*)

By the said Statute for Uniformity of Common-Prayer, the 12d. per *Sunday* and *Holy-Day*, was not recoverable, 'till the Party neglecting the going to Church, was *indicted*. And by this, the 23d of the Queen, there must be a *Conviction* by the *Indictment* or *Information*, before the 20^l. can be recover'd, or the Party deem'd a *Recusant*, or as being *convicted*. *Dr. Foster's Case*, 1 Roll 90, Co. 11. 59.

Secl. 7, dict. Statut. 23 Regina, Justices of Oyer and Terminer, and Justices of Assize, and of the Peace, &c. are impower'd, &c.

27 *Elix. Cap. 2*,
Is the Act against Jesuits, Seminary Priests, and such other like disobedient Persons.

Secl.

Se^{ct}. 9 in this Act, Those who discover not such Priests, &c. shall make *Fine*, and be *imprison'd* at the *Queen's Pleasure*.

Yet, here, the Offender must be *proceeded* against according to the *Course of Law*; for he cannot be *fin'd* or *imprison'd* at the *Queen's Pleasure*, by this Statute, before he be *indicted*, *convicted*, and *Judgment* given against him.

29 Eliz. Cap. 6,

Is the Act for the more speedy and due Execution of certain Branches of the Statute 23 Regiz.

Se^{ct}. 2, Conviction of *Recusancy* is to be certify'd into the Exchequer, for that Court to *award Process*; and *Conviction* thereafter to be in the *King's-Bench*, or at the *Assizes*, or *General Goal-Delivery*.

Yet, here, (I conceive) Justices of the Peace may take *Indictments*, but not proceed to *Conviction*: But by the Statute 3 Jac. Cap. 4, Justices of the Peace are impower'd, as well as other Justices, to proceed

to Conviction by Proclamation, &c.
Sect. 5.

And a Conviction by Proclamation,
is not so penal as when by Judgment,
according to 22 Eliz. Cap. 1, Co.
11, 65, Dr. Foster's Case.

35 Eliz. Cap. 1,

*Is the Act to retain the Queen's
Majesty's Subjects in their due
Obedience, and commonly call'd
the Act against Sectaries, as
distinguish'd from those of the
Romish Profession.*

Whereby Offenders are to con-
form, &c. or else to abjure; and
in Default of abjuring, to suffer
as Fellons, without Benefit of
Clergy.

35 Eliz. Cap. 2,

*Is the Act for restraining Popish
Recusants to some certain Place
of Abode.*

Hereby Popish Recusants, then
convicted, or thereafter to be con-
victed, were to repair to their
usual Dwelling, and not remove
above five Miles, under the Penalties
thereby inflicted. [Sect. 1 and 2.]

By

By this Statute, none is punishable till *convicted*; and that must be by *Indictment* or *Information*. [*Vide Co. Lib. Intr. 569, Co. 11, 56.*] And if a *Popish Recusant* be to be presum'd as incapacitated to take, give, or dispose of a Thing, (as in the Case of a *Quare impedit*, by the Chancellor and Scholars of Oxford University, *Trin. 11, Fac. 10, Co. 54.*) the *Conviction* must be set forth with an *Averment*, that the Party suppos'd to be *disabled*, is *Papalis Recusans*: And which cannot be, but by his being *indicted*, and *Judgment* (in such Case) or *Information* given against him.

1 *Jacobi, Cap. 4,*

Is the Act for due Execution of the Statutes against Jesuits, Seminary Priests, Recusants, &c.

By this Statute, Conformity after *Judgment*, and before *Execution* executed, is sufficient; and if it be by *Information*, [*tam pro Domino Regis, quàm pro seipso*] the *Recusant* may have an *Audita Querela*
 K 3 against

against the Informer; and against the King he must plead his *Conformity*; for an *Audita Querela* don't lie against the King. [11 Hen. 7, 10.]

The *Recusants*, by this Statute intended, must be such as are convicted upon *Proclamation* and *Default*; or convicted by *Verdict*, *Confession*, &c. and adjudg'd.

3 Jacobi, Cap. 4,

Is the Act for the better discovering and repressing of Popish Recusants.

If an *Information* be brought upon this Statute, for not receiving the Sacrament, the *Conviction* of the Party for *Recusancy*, must be shewn in certain, before whom, in what Court, &c.

3 Jacobi, Cap. 5,

Is the Act to prevent and avoid Dangers, which may grow by Popish Recusants.

This Statute (more than the former) seems to take in those convicted by *Proclamation*, &c. as to be

be within the Construction of *Conviction*.

7 Jacobi, Cap. 7,

Is the Act for administering the Oath of Allegiance, and for Reformation of marry'd Women, Recusants.

As this Act directs that the Party to whom the Oath shall be tender'd, shall stand, and be presented, indicted, or convicted (being in the *Disjunctive*) 'tis not necessary that the Party be *convicted*; for if he stand *presented* or *indicted*, for not coming to Church, or not receiving the Sacrament, (so as he be under the Degree of a Baron) a Justice of Peace is empower'd to tender the Oath by this Act.

3 Car. 1, Cap. 2,

Is the Act to restrain the passing or sending of any to be Popishly bred beyond the Seas.

Justices of the Peace cannot take an *Indictment* upon this Statute; for the Powers here are in those of *Oyer and Terminer*.

25 Car. 2, Cap. 2,

Is the Act for preventing Dangers which may happen from Popish Recusants, and is commonly call'd The Test-Act.

By this Act, those neglecting, &c. forfeit Offices, and are adjudg'd, *ipso facto*, incapable, and disabled, and made incapable to sue, or use any Action, Bill, Plaint, or Information, at Law, or in Equity, to be Guardian, Executor, or Administrator, or to have Legacy or Gift, or to have Office, and to forfeit 500 l.

Here also must be a Conviction by Information, Presentment, or Indictment, else the Party is neither liable to the 500 l. Forfeiture, nor disabled, as to bringing Actions, or being Guardians, &c.

30 Car. 2, Cap. 2,

Is the Act for the more effectual preserving the King's Person and Government, by disabling Papists from sitting in either House of Parliament.

Re-

Recites the Mischiefs of the free Access of *Popish Recusants* to his Majesty's Courts.

1 Gul. & Maria, Cap. 8,

Is the Act for the abrogating the Oaths of Supremacy and Allegiance, and appointing other Oaths.

Hereby the old Oaths of Allegiance and Supremacy are abrogated, and a new Oath and Declaration substituted in the Room of them.

And all Persons (other than such concerning whom other Provision should be made by that Act, or other Act of that Parliament) thereafter to be admitted into any Office or Employment, Ecclesiastical or Civil, oblig'd (by any Statute) to take the abrogated Oaths, are oblig'd to take the Oath and Declaration here appointed, under the Penalty of incurring, and being liable to the *same Penalties, Forfeitures, Disabilities, and Incapacities*, as (by the former Statutes) were appointed, on Neglect or Refusal to take the former Oaths, thereby abrogated, or either of them.

Eccle-

§. 7. Ecclesiastical Persons (then in Benefice) neglecting or refusing (by the 1st of *August* 1689) to take these Oaths, are to be suspended for *six Months*, from thence; and if neglecting, &c. by the Space, or to the End of those six Months, to be (*ipso facto*) depriv'd of their Offices, Benefices, Dignities, and Promotions Ecclesiastical, and (by this Act) are adjudg'd so to be, &c.

§. 9. Other Persons refusing, &c. to be imprison'd, unless they pay (not exceeding 40 s.) for the first Refusal, or not exceeding 5 l. for the second Refusal; on third Refusal, made incapable of any Office, Civil or Military, and to be bound to the good Behaviour, 'till they take the said Oaths; and if they refuse to make and subscribe the Declaration, [in the Act 30 Car. 2, Cap. 2,] to suffer all Pains, Penalties, Forfeitures, and Disabilities, as a *Popish Recusant Convict*, and be taken and deem'd a *Popish Recusant Convict*, to all Intents and Purposes whatsoever.

more to come in the next page

13 & 14 Gul. 3, Cap. 6,
*Is the Act for the farther Security
 of his Majesty's Person, and the
 Succession of the Crown in the
 Protestant Line, and for extin-
 guishing the Hopes of the Pre-
 tender, and his open and secret
 Abettors.*

Whereby the Oath of Abjuration
 is to be taken, under like Penalties
 as in the Statute 25 Car. 2, Cap. 2,
 which see before; and farther en-
 larg'd by the Act, 1 Regina Anne,
 Cap. 17.

1 Georgii, Fol. 313,
*Is the Act for the farther Security
 of his Majesty's Person and Go-
 vernment, and the Succession of
 the Crown in the Heirs of the
 late Princess Sophia, being Pro-
 testants, and for extinguishing
 the Hopes of the pretended
 Prince of Wales, and his open
 and secret Abettors.*

Whereby the like Oath and De-
 claration, as by the Statute, 1 Gul.
 & Maria, are to be taken; and also
 the like Abjuration, as by the Sta-
 tute,

tute, 13 & 14 Gul. 3, under the like *Penalties* as in the Statute 1 Gul. & Maria.

ea. 11, 2. The first Refusal, or neglecting to appear on Summons, (differing from the Steps to be taken by the Act 1 Gul. & Maria), being certify'd, &c. and the Name being publicly read, &c. the Refuser to be taken, esteem'd, and adjudg'd, a POPISH RECUSANT CONVICT, and (as such) to forfeit, and be proceeded against, as if such Person had actually refus'd to take the said Oaths, &c.

By Sect. 8 of this Act, those neglecting or refusing to take the Oaths thereby requir'd, (at or by the 23d of January 1715) are declar'd (*ipso facto*) incapable as to Offices and Employments, &c. much and in like Manner as in the Statute 25 Car. 2, Cap. 2.

And, by Sect. 9, such Neglectors or Refusers, exercising by themselves, or Deputies, or Trustees, any of the said Offices or Employments, (being thereof lawfully convicted, in or upon any Information, Present-

Presentment, or *Indictment*, &c.) are made incapable to *sue*, &c. and to forfeit 500*l.* and their *Votes* in Elections for Members of Parliament are *taken away*, which is a farther *Inability* than by any of the said former Statutes.

On Consideration of all the foregoing Acts, I conceive,

That the *Ecclesiastical* Jurisdiction can have *no Cognizance* of Offenders against any of the *Statutes*, without incurring a *Premunire*; and may be stopp'd by *Prohibition*, especially in Cases where Persons are to be divested of their *Freehold*, (and such is *Dr. Welton's Case*, on the pretended PRESENTATION of another to his Living of *White-Chapel*) so much regarded by *Magna Charta*.

Ist.

For if a Man be admitted, instituted, and inducted to a Church, and afterwards be su'd in the Spiritual Court for the Institution, supposing it to be not good, and therefore to have it defeated, a Prohibition shall be granted, for that by
the

the Induction, the Parson has the Church as a *Lay-Fee*; and therefore the Common Law shall be preferr'd before the Spiritual Law, and shall draw the Tryal of the whole to it; for otherwise all *Quare impedit* would be overthrown; because by that Means they might try all manner of Rights of Patronage in the Spiritual Court. *Trin. 15 Jac. B.R.* a Prohibition was granted in one *Wilson's Case* accordingly. *Hil. 15 Jac. B. R.* between *Hitching* and *Glover*, it was resolv'd by the whole Court,

That if a Man be admitted, instituted and inducted to a Church, and afterwards be depriv'd, because he was instituted contrary to the Course of the Ecclesiastical Law, it is a void Sentence of Deprivation, because by the Induction it is now become a *Lay-Fee*. *Hitching & Glover, ubi supra.*

35 Ed. 1, Rot. Patentium, membrana 25.

Is the King's Writ, commanding the quieting the Clerk against Citations and Appeals.

That

That no Offender against all or 2dly.
any of those Acts, can be deem'd a
Popish Recusant, 'till proceeded a-
gainst by *Information* or *Indictment*,
and JUDGMENT given thereon,
which compleats the CONVICTION.

Non constat, but that Dr. *Walton* 3dly.
may have taken the Oaths before
the 23d of *January* 1715.

That tho' the Doctor had been 4thly.
convicted, (by Virtue of the said
Act, 1. *Georgii Reg. Sect. 12.*) *non*
sequitur, that he must be *divested* of
his *Freehold* in the said Living;
for the Consequence of such a Con-
viction would be, that by the Laws
against *Popish Recusants convicted*,
the King may have 20 l. *per Month*,
or the two *Thirds*, at his own *Ele-*
ction; and surely it will not be de-
ny'd, but that such *Recusant* may
have the *third Part* to himself; nor
do any of the foregoing Acts *disable*
a very *Recusant* from holding a *third*
Part of his *Freehold*. And Dr. *Wel-*
ton hath, in himself, a *Freehold* for
Life. (or 'till *legally* abated, by
Cession, *Resignation*, or *Deprivation*)
in the Living of *White-Chapel*.

His

thly. His being suppos'd (*ipso facto*) incapable or disabled in Law, [§ 8 of this Act] the Courts of Law, and not that of the *Ecclesiasticks*, must first give *Judgment*; otherwise, any Patron, who inclines to *oust* his Incumbent, may as justifiably *present* a Clerk to the Bishop of a Diocese, as Dr. *Shippen* now stands *presented* to succeed Doctor *Welton*.

6thly. By Sect. 9 of the same Act, a *Punishment* is inflicted, and a *legal Conviction*, besides the bare *Ipso facto* requisite; else, the naming, here, of *such Person and Persons*, (which necessarily refers to the 8th Section, before) and such *Neglect*, or *Refusal*, would be absurd; and rather denotes, that the *suppos'd Neglector*, or *Refuser*, must be ADJUDG'D on such *Ipso facto*, and not be left to every, or any one's bare *IPSE DIXIT*.

Pat. Lacy.

Inner-Temple, June 1, 1716.

Now, according to the Method hitherto taken, we are, in Course, to argue upon the *tenth Article* of Dr. *Welton's* Allegation, and to support and justify the *Relevancy* of it. The Substance whereof is,

That in Case Dr. *Shippen* had ob- Art. 1
tain'd a *Presentation* to *White-Chapel*, it is *unduly* obtain'd and made, and in it self *null* and *void*, being so obtain'd before that *Living* (not becoming void by *Death*, *Cession*, or *Resignation*) is actually declar'd (by legal *Process*, *Proceedings*, and *Proofs*) to be *vacant*; because the Persons *pretending* to make such *Presentation*, are not *Patrons*: And, farther, the *Grounds* upon which such *Presentation* is founded and granted, are *fiſtitious*, and such as *by Law* ought not to be admitted, (as will appear when it is produc'd, and the Party proponent has Liberty to object) which is pray'd to be exhibited according to the *Order* of this Court.

It is to be noted, that this Cause against Dr. *Welton*, is not a Cause [*ex Officio Judicis*] to *article* or *object*

ject Matters against him, touching his Cure of Souls, and Benefice, in order for Correction or Deprivation; but is commenc'd, at the Instance of Dr. Shippen, against him, under Pretence and Title of a *Presentation*, which he has obtain'd, to the same Living that Dr. Welton enjoys: And being therefore a Matter of *Meum* and *Tuum*, litigated between two *Parties* contending in the Cause, and concerning *Right* and *Possession*, the Person in *Possession* ought by no Means to be *disturb'd*, until the Person who *claims* a *Right* and *Title* by *Presentation*, and aims at getting *Possession* from him, has first clearly prov'd that he has a *Right* and *Title* to molest the *Possessor*, and to procure his *Right* and *Title* to be *revers'd* by *Deprivation*, and his own *Title* (founded on such his *Presentation*) to take *Place*.

It is common (*at the first Step*) in Cases relating to Intestates Estates, for one of the contending *Parties* to deny the Interest, *Right*, or *Title* of his *Adversary*, before the Matter in *Question* (upon the *Merits*) comes in *Debate*:

Debate: And it is necessary it should *so be*, to prevent Expence in a Cause. It would be very inconsistent to *begin* at the latter *End*, to hear the *Merits* of the Matter in *Dispute*, and *then* to enquire into the *Right* of the *Parties claiming*. Unless, therefore, the Person claiming does propound and prove his *Interest*, the other Side ought to be *dismiss'd* with Costs, as having been conven'd at the Instance of a Person *having no Right to call him*.

In this Case, therefore, where it is objected (on Dr. *Welton's* Behalf) against the Title and Interest of Dr. *Skippen*, (under his *Presentation*) that such *Presentation* is *unduly obtain'd*, before the Living became *vacant*; and that the Persons making such *Presentation*, are *not* the Patrons; and that the *Grounds* upon which the *Presentation* is founded, are *fictitious*, and ought not by Law to be admitted.

The first Thing incumbent on Dr. *Skippen* to do, (as oblig'd by Law and the *Practice* of the Court) is to *plead*, and *prove* his *Interest*: To prove that

the *Living was vacant* before the Date of such *Presentation*; to *prove* the *Persons* presenting him, are the *Patrons*; and that the *Presentation* is *justifiable* by Law. Otherwise, if the *Living was not vacant*, what was he *presented* to? And if those *presenting*, are not the *Patrons*, where is his *Right* or *Interest*? And if he has no *Interest*, Dr. *Welton* ought to be *dismiss'd*. He must, therefore, *first* prove the *Living* to be * *vacant*; for otherwise he ought not to have *Institution*.

It appears (by the Tenor of our elder Forms and Proceedings) that the Ordinary had always a tender Regard to the Right and Possession of Livings, and did not grant *Institution* (tho' there was no Manner of Opposition) until he was satisfi'd,

* Si alicui collatum est Beneficium, nondum vacans, [c. 9. ext. de Concess. Præbend.] canonicè institui non potest. Hujus regulæ rationem reddit *Peckius*, Quod in Ecclesiam Dei non debet alius esse ingressus quàm per *Ostium*, cujus *Claves* PRÆFECTIS Ecclesiarum committuntur, qui eisdem *Clavibus* & *canonicis regulis* instituendos in eandem Ecclesiam Dei intromittunt. *Sum. Jur. Can.* p. 501.

fy'd, by a formal *Enquiry* made into the Points relating to the *Right of Patronage* ; and whether the Church *was void* ; and if *void*, how it became *so*. This Enquiry, *de Jure Patronatus*, (now grown to be occasional only, when Churches happen to be *litigious*) it seems, anciently, issu'd (of Course) upon every *Presentation* made, and *antecedent* to Admission and Institution, as appears in the Registry of * Archbishop *Winchelsey*, by a Letter from the Archbishop, to the Bishop of *Worcester*.

In the same Register, the Direction concerning Vacancies by *Resignation* is, that when the Admission of the Resignation is *clear*, and not before, Letters of *Enquiry* are to be || granted ; and it is insisted upon, that such † Enquiry is in the first Place to be made.

L 3

Thus

* *Inquisitio, ut moris est, super Vacatione dictæ Ecclesiæ, & aliis Articulis consuevis, in pleno loci Capitulo, ad vestrum facta mandatum, pro prædicto sufficienter fecit præsentato. Regist. Winchels. fol. 1436.*

|| *Literas Inquisitionis concedas. Ibid. 187.*

† *Cum Inquisitio ad Mandat' dicti Domini*
Epif.

Thus * *Lyndewode* (by Way of Commentary) says, That the Ordinary, *before* he admits of a *Presentation*, ought in every Particular of *Vacancy* to inform himself by a diligent *Enquiry*. By which Means all Disputes, and the many Inconveniences that attend hasty *Admissions*, are avoided. And this is the Method directed and requir'd by the Forms of Proceeding in such † Cases. And

Episcopi super *Vacatione* dictæ Ecclesiæ, & alijs Articulis, juxta morem, facta pro te faciat. *Regist. Winchels.* 292.

* Debet *Instituens*, ante *Admissionem Præsentati*, de omnibus & singulis talibus se diligenter informare.

† *Willielmus*, Permissione divinâ *Cantuariensis* Archiepiscopus, &c. Dilectis filiis Magistris *Johanni de Wyneston*, &c. Salutem, Gratiâ, & Benedictionem. Præsentârunt Nobis dilecti filii, Frater *Willielmus*, &c. dilectum sibi in Christo *Richardum Goselyn*, &c. ad Ecclesiam Parochialem de *Skippenden*, vacantem, & ad eorum (ut dicunt) Præsentationem spectantem. Quocirca, Vobis, de quorum Circumspectione & Industria plenam in Domino fiduciam obtinemus, ad inquirendum con-



And Proof of a *Patron's Right* ought more especially to be made, where such Right is *objected against*; and 'till these two Points, of the *Vacancy* and *Patronage*, are *pleaded* and *prov'd*, there is no *Pretence* to ask *any Thing*.

It would have been a different Case, if this Matter had been *promoted* by the * Court, against Dr. *Welton*; for (there) the Proceedings against him, would have been in Virtue of the Authority of the *Judge's Office*, who becomes as an

L 4

Agent

conjunctim vel divisim, seu *inquiri* faciendum & demandandum, nostrâ Authoritate, (Sede *Norwicense* jam vacante) de *Vacatione* dictæ Ecclesiæ de *Shippenden*, & *Qualiter*, & à quo tempore incepit vacare, (*vocatis in hac Parte de jure vocandis*) *Quis*, vel *Qui*, sit, vel sint, dictæ Ecclesiæ *verus Patronus*, seu *veri Patroni*, & ultimò præsentarit, seu præsentarunt ad eandem; an sit *Pensionar* vel *Portionar*; & si sit, cui vel quibus, & in quantum quantæque æstimationis existat; de vitâ etiam, moribus, & conversatione dicti Præsentati, & an sit alibi *Beneficiatus*, nec non super omnibus & singulis *Articulis* in hac Parte debitis & consuetis, &c. *Witlesey Registr. fol.*

144.

* Ex Officio Judicis.

Agent in such Case ; and there is no objecting to *his Title* of convening and proceeding, which he does in || Virtue of his Jurisdiction, without Regard had to the Interest of any other Party, and for the † Soul's Health only : But where there are two Parties litigant, in a ‡ controverted Point between them, (* the Plaintiff and the Defendant) and where the Defendant (or *Pars rea*) does *object* against the Interest and Title of the Plaintiff, (or *Pars agens*) such *Interest* must be first prov'd ; which is, in this Case, a judicial *Vacancy* before the *Presentation* is to commence ; and Right of *Patronage* decided, before *Institution* can be regularly pray'd.

It is therefore somewhat extraordinary, where there is an *Opposition* made, for a Person to ask *Institution* and *Induction*, under a *Presentation* to a Living alledg'd to be full.

|| Virtute Officii.

† In Animæ salutem.

‡ In Foro contradictorio.

* Pars agens, & Pars rea.

|| *full*; to a Living not *prov'd* to be *vacant before* such *Presentation*! to a Living, to which the *Persons* mention'd in such *Presentation*, had no Manner of *Right* to *present*! And all this objected and insisted upon by the Person in *Possession*! Dr. *Skippen* should *first* prove his *Right*, under that *Presentation*, by the *Avoidance*, and by the *Jus Patronatus*; and if he can do *these*, (and it is objected he can do *neither*) then it will be proper Time for him to pray *Institution*.

That the *Premises* are true, where- Art. II.
of there is a *publick Fame*; where-
upon the Party prays to be *dismiss'd*,
&c.

This is an Article of *Form*, and
admissible of Course.

This Plea, on Behalf of Dr. *Welton*, was given in, *first*, by Way of *Allegation*, and then *additional Articles*. And the tenth Article of the *Allegation* shews the Occasion
given

given of adding *additional Articles* to that *Allegation*: For the Judge having interpos'd an Order, on the fourth Session of *Easter Term*, (at which Time Dr. *Welton's Allegation* was given in) That the Presentation mention'd on Behalf of Dr. *Shippen*, should be brought into the *Registry*; (as is pray'd in the tenth Article of Dr. *Welton's Allegation*) which, after some Objections to such Presentation in general, has it thus: "As will appear by the said "pretended *Presentation*, (*when* "produc'd;) and the Party propo-
 "nent has Liberty to object to the
 "same, which he prays may be ex-
 "hibited, according to the Order of
 "this Court." And this Order of Court not being comply'd with by the other Side, 'till a Day or two before the second Session of *Trinity Term*, upon that Session, therefore, additional Articles, relating to the *Presentation*, were given in on Behalf of Dr. *Welton*.

This is mention'd, to shew the Reason of being oblig'd to propound the Fact on Behalf of Dr. *Welton*,
 in

in a separate Manner; and why not, *at once*, given in compleat, and as a full Plea of the whole Matter? as it would have been more natural and easy to have done, had the *Presentation* been exhibited in Court, at the first of *their* Outset in the Cause; and would have prevented the being under a *Necessity* of using some Repetitions of the former Fact, in the new Matter of additional Articles on Behalf of Dr. *Welton*, in order to make it more connective and relative to the preceding Facts of his Allegation; and which *additional* Facts might, *otherwise*, have been *interspers'd* in the former Allegation, and plac'd in a more natural *Series* and *Chain* of Thoughts; and thus made the Composition more *formally* exact; and excus'd it from the Crime of *Hysteron, Proteron*.

Thus much by Way of *Apology* for *Form*; however, saving the more exact Methodicalness, (which, had the other Side given Opportunity, would have been us'd) the *Facts* (as they are now *separately* deduc'd

deduc'd and set forth in the *whole Plea*, by Way of *Allegation* and *Articles*) are, taking them *altogether*, pertinent, and to the same Purpose in Hand.

To speak, therefore, of the ADDITIONAL ARTICLES, given in on Behalf of Dr. Welton, the first urges, That

Article 1. Whereas *Freeman* and *Meer*, mention'd in the *Presentation* exhibited, are *thereby* styl'd *Patrons* of *White-Chapel*, the same is falsly suggested; for (*in rei veritate*) they are *not* the true *Patrons*.

Therefore the *Presentation* (which is the *Ground* and *Foundation* of *Dr. Skippen's Title*) being made by Persons having no *Right of Patronage* to present, he has *no Interest* or *Pretence* to pray any Thing; and he who presents, having *no Right*, is an *Usurper*; and this is a wrongful Act in the *first Step* towards *Usurpation*.

This has been observ'd upon (more fully) before; but by Reason
the

the *Presentation* lay a long while dormant, before it would venture to shew it self in Court, as an *Exhibite*, (*and it has but an ill Face now*) and being, at last, brought in, (upon frequent *Motions* for it) Occasion was *thereby* given for these *additional Articles*, containing some few farther Particulars, which otherwise, as has been said, might have been compriz'd in the first *Allegation*; and thereupon occasions some few *Repetitions*, which having been in a Measure accounted for before, is touch'd upon here with the greater Brevity.

We come, therefore, to the second additional Article, which says, That

Whereas it is set forth, in that Article 2.^d *Presentation*, (dated the 3^d of March, 1715) that the Rectory of *White-Chapel* was then vacant, by *Amotion* of Dr. *Welton*, the same is false; for that no Cause or Prosecution whatever had been brought before the Date of that *Presentation*, whereby Dr. *Welton* was before, or at

at the Time of the Date of the said *Presentation*, adjudg'd, in any Ecclesiastical Court, to be depriv'd, suspended, or amov'd from that Rectory; nor is he legally depriv'd or amov'd by the Laws, Canons, and Constitutions of this Realm; nor ought to be, but by *Sentence* and *judicial Privation* first regularly obtain'd in the Ecclesiastical Court.

This Article is of so very great Weight and Consequence, that if the Contents of it are *true*, (as it is evident they *are*, nor has Dr. *Shippen* undertaken to *prove* to the contrary) if they are *true*, as the Fact is here stated, which is, *That the Living is not vacant*; then is not the *Presentation* invalid, if the Living be full. It appears [according as the old Forms run] that a *Presentation* was never granted, but upon the Head of a || Varancy first prov'd; (which was not so, in the present Case, at the *Date* of the *Presentation*;) such *Presentation* is therefore too *early*, in Point of *Time*: And a *Presentation*

|| Quia Ecclesia vacat ad presens.

sentation to a Living *not void*, is presenting to *nothing*, and is *void* in it self. And, besides, if Dr. *Welton* was not amov'd *before* the *Date* of the *Presentation*, nor depriv'd by regular Steps and *Sentence*, then how can a *Presentation* take Effect? For by *Super-Institution* of Dr. *Shippen*, there would be then *two* Rectors of *one* (and the same) Cure; which is inconsistent in it self, and expressly caution'd against and prohibited by the **Constitution* of *Stephen Langton*, against committing the same Church to *more* Parsons than *one*.

That the *Presentation* (by the Article 2
Errors, Rasures, Interlineations, and
Obliterations, in the most essential
Parts)

* *Districtiùs inhihemus, nè deinceps Ecclesia aliqua pluribus Rectoribus, quorum uterque sit Persona committatur.*

Upon which the Gloss of Lyndewode is,
 Ut unusquisque eorum pari honore in Ecclesia habeatur intitulatus, & alteri alter non subfit: Hoc namque esset in uno Corpore duo esse Capita, quasi Monstrum! ut tamen unus sit Rector, & alter, sub se, Vicarius, in eadem Ecclesia non prohibetur hic, nec etiam alibi in quantum recolo.

Parts) appears to be suspicious, fraudulent, and falsarious, is not an *authentick* Instrument, carrying full Faith, nor such as ought, *by Law*, to be admitted ; nor are the Contents thereof *true*.

As to the *Truth of the Contents*, it is before-mention'd, that the Persons therein calling themselves *Patrons*, are not so ; and that the *Amotion* therein mention'd, was not so at the *Time of the Presentation*, nor is as yet so : And that the Presentation ought not, by *Law*, to be admitted ; the very *Face* of it shews it not to be *authentick*. The *Names*, *Place*, and *amotion*, and all the Words of Force in it, appear to be put in after *Rasures* ; and it is altogether a *suspicious Scrawl*.

And altho' a *Presentation* (being but the *Commendation* of a fit Person, by the Patron, to the *Bishop*, or *Ordinary*, to be admitted and instituted into a Spiritual Benefice *void*, and in his *Gift* or *Nomination*)
may

may be done, either by *Word* alone, or by *Letter* missive, or other *Writing*; yet, as the Grant of a next *Avoidance* is not good without *Deed*; so likewise, where a *Corporation* aggregate of many does *present*, it must be under their *Common Seal*: Now, the *Presentation*, in Question, is pretended to be from the *Fellows* of *Brazen-Nose* College, (who are a *Community*) as *Patrons* of this *Living*, and as from a *Body Corporate*; therefore it ought to have been under their *Common* or *College Seal*; else it is not *valid* according to *Law*, and ought *not* therefore to be *admitted*. And if there is no *regular Presentation*, Dr. *Skippen* has no *legal Title*, or Pretence to call Dr. *Weldon's* Right in Question, *at his own Instance*, in this Case; nor can be a proper Party in *Judgment* against him, unless he were to act as a *PROMOTER*, and prefer *Articles*, *ex Officio Judicis*, against him.

Now as to the fourth Additional Article.

Whereas it is alledg'd by Dr. *Article Skippen*, he is *duly* presented to the
M Rectory

Rectory of *White-Chapel*, and there-upon prays *Institution* and *Induction*: And whereas this Suit is commenc'd *Ad Instantiam Partis*, (of Dr. *Shippen* :) And whereas Dr. *Welton* denies and opposes the pretended Right of the pretended *Patronage*, and the pretended *Interest* of Dr. *Shippen*, under the same, and the *Validity* of the pretended *Instrument of Presentation*, and the *Truth of the Contents*; Dr. *Welton* prays, that Dr. *Shippen* may be oblig'd to propound, and plead his pretended *Interest* in due Form of Law; and that he may have *Liberty*, then, to make his *lawful Defence*, as by Counsel he shall be advis'd.

This Article speaks the *Reason* (of its self) for its being admitted, without any farther *expatiating* upon it; it having been said before, That as this is not a Cause *ex Officio judicis*, but between *Party and Party*, when the *Interest* of a *Party* is oppos'd, he is, in the first Place, oblig'd to plead, and prove such *Interest*, as it is done daily, in Cases of *Relations*, in the *Prerogative*.

tive-Court, praying Administration or Distribution ; where the *Interest* of one Side is objected against, until such *Interest* be *pro-
pounded* and *prov'd*, that *Person*, whose *Interest* is so oppos'd, has no *Right* to pray any Thing more than *Dr. Shippen* can have in this Case, 'till he has prov'd the *Interest* oppos'd by the other Side, and under which he pretends to claim by, in this Cause.

The PRECIPITANCY of these Steps and Proceedings, push'd on against *Dr. Welton*, appears in several Respects throughout the *whole Transaction*, as has been in some Measure already accounted for ; but to proceed with some farther *Instances* thereof, it is to be observ'd ; That the Cause stood assign'd to II 3
171 hear the Judges Pleasure upon the Petition of the Proctors on both Sides, *viz.* *Oughton's* Petition for Admission of the Allegation and Articles on Behalf of *Dr. Welton* ; and *Rouse's* for admitting *Dr. Shippen's Institution*.

This shews the *Hastiness* on Dr. Shippen's Side, in praying *Institution* then, whereas the Witnesses on his Side were examin'd *but on the 10th of July*, and Copies could not be possibly got in so short a Time as by the *next* Day, with Time for Counsel to peruse them, and be prepar'd.

- II. Hereupon it was adjourn'd to the
 16. 4th of *September*; at which Time the Bishop of *London* was *expected*; but not *coming*, it was, *notwithstanding*, insisted on Dr. Shippen's Behalf, very *strenuously*, to have it heard then as to *Institution*; but that it might have a Hearing as to the *Petitions hinc inde*, before the *Bishop* himself as was desir'd by Counsel, the Chancellor appointed to hear his Pleasure upon the *Petitions on both Sides*, on the 4th of *September* following.

Now the *Hurry* of the adverse Party is to be here taken Notice of; which appears by their being too *early* in Time, according to the Method of Proceedings, *for bearing the Cause*; for it stood at this
 Jun-

Juncture, as to Dr. *Welton's* Side, upon the Debate only of the *Admission* of the Allegation, and additional Articles given in on his Behalf.

And on Dr. *Skippen's* Side, the Cause stood only at *Publication* on the 28th, of last *June*.

And where Proceedings have been made *Plenarily*, as in this Case, by giving *Allegations*, by having Witnesses *examin'd*, and *Cross-Interrogated*, and their Depositions taken in *Writing*, in the *Registry*, and not examin'd *viva voce*, as in *Summary Causes*, and then *Publication* pray'd and decreed;

In such Cases, after *Publication on both Sides*, the Cause ought to be call'd on *ad Concludendum*; and after that, *ad Audiendum Sententiam*; so that those two Assignations, the one of concluding the Cause, and the other of bearing Sentence therein, ought to be first regularly pray'd and assign'd, according to the usual *Practice, Proceedings*, and *Style* of the Court: And those *Assignations* are to be so as-

sign'd and appointed each upon a *separate Court-Day*, which cannot be but in *Term*; and therefore it was very *burrying* Usage, to push on the Hearing of the *Merits* of the Cause in the Time of *Vacation*; putting the Judge, Counsel, and all Parties concern'd, to an *unnecessary Attendance*, and obliging them to come purposely to Town.

But in such full *Speed* and *Career*, there generally happens a *Trip*; and making a *false Step*, which is call'd a *Nullity*, is Ground for an *Appeal*, and such is the calling on the *Hearing of the Cause* before 'tis ripe for it; and if so, they may unawares (as the Phrase is) *cadere in causa*.

And besides *over-hasty*, *pressing*, *burrying*, and *greedy gaping* after a *Living*, is very much condemn'd; and the Constitution of *Otho* very *empbatically* describes the Persons guilty of *Precipitancy*, and brands them with the *Characteristick* of being *blinded with an Over-Desire of Profit*. *

This

* *Nimiâ Cupiditate cæcati.*

This is what *Othobon*, in his Constitution, calls *Immoderate* and *Damnable* †. This is what he calls the Sins of *Covetousness*, and *Rapine*, || and *spiritual Adultery*. And the Constitution of *Stratford*, in *Lyndewode*, calls it * *hungry Avarice*; and those and other Canons, call *hasty Intruders* by the odious Names of *Rebels*, *Excommunicates*, *Sacrilegious*, and *Usurpers*.

But, however, to *countenance* and *palliate*, in some Measure, this driving on *furiously*,

It is *insinuated*, as if what is done thus *uncustomarily* (and, as may be said, *inconsiderately*) *hasty*, is only to prevent a *Lapse*, and for no other Reason.

But this *Fallacy*, however plausible it may seem, is easily detected, upon considering *what is Lapse*, and *when it happens*.

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Lapse,

† *Amoris Proprii immoderata & damnabilis Præsumptio.*

|| *Cupiditatis & Rapinæ vitium.*

* *Efuriens Avaritia.*

Lapse, therefore, is when a Person who has Right to present to a *Living*, slips the *Opportunity* of presenting a Clerk *in due Time* to the Bishop, for *Institution* and *Induction*; which happens by the Patron's omitting so to *present* a Person within *six Months* after the Church is *void*; by which *Neglect*, Title is given to the Ordinary to *collate* to such Church.

But in Case a Church should happen, in *Strictness* of Time, to be *laps'd* to the Ordinary, yet, nevertheless, if the *Patron* does present *before* such Time as the Ordinary (to whom the Right of *Collating*, upon Account of such *Lapse*, does immediately accrue) has actually *fill'd* the Church, even then, he shall not be excluded *in Point of Time*, but such his Presentation, *even then*, shall take Effect, and the Ordinary is oblig'd to receive his Clerk: For *Lapse* to the Ordinary, is only an *Opportunity* given him of executing a *Trust*, which is of seeing the Cure *supply'd* in Case of the Patron's *Neglect*; which being

per-

perform'd by the *Patron* himself, at any Time before the Ordinary *interposes*, the Ordinary is thereby *forestall'd* and *excluded*, takes no Advantage by it, and is bound to admit the Clerk, as Clerk of the very *Patron*. 11 H. 4. 80. 18 Eliz. 3, 21. a. 13 Eliz. 4. 3. 43 E. 3. 11. a. Trin. 18 H. 17. *Keilwey* 50, and by *Hobart*, in *Colt and Glover's Case*, p. 154, 28 and 29 Eliz. *Beverley, v. Bishop of Canterbury* and *Cornwell, i Anderson*, 148, *Doctor and Student*, l. 2, c. 36. And tho' the *Patron* does not present *within his six Months*, but the Ordinary *collates* before the Expiration thereof, the *Patron* is not thereby barr'd from presenting, but may present *after the six Months* are expir'd, and his Clerk *ought* to be receiv'd, Co. 6, *Green's Case* 29, and *Boswell's Case* 50.

And Title by *Lapse*, can never accrue to the *Metropolitan*, or the *King*, unless it hath first accru'd to the immediate *Ordinary*. This is agreed on all Hands, even tho' the *Lapse* be lost by *Default* of the
Or-

Ordinary, (as for want of giving Notice, or the like.)

Now let us therefore enquire as to the *periodical Time*, from which *Lapse* may be properly said to accrue in this *Case*.

The *Commencement* of this *Time*, must be computed (as it is in all *Cases* of *Lapse*) from the *Vacancy* of the *Living*; and from thence we are to calculate the *Term* of *six Months*; and that *Time*, so computed, (from the actual *Vacancy*) expiring, there may be then Danger suppos'd of a *Lapse* ensuing.

And as to the *Manner* of reckoning up these *six Months*, my Lord *Croke* says, the *Computation* shall be made according to the *Kalendar*, for one half Year, and not accounting 28 Days to the Month; and so 'twas resolv'd in the Court of *Common-Pleas*, in the *Time* of *H. 7* and *H. 8*, as it hath also been resolv'd by divers later *Judgments*; and that the *Day* the Church becomes *void*, is not to be reckon'd in.

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It behoves, in the first Place, therefore, to fix a *Time* when this Living became actually *void*, and from *thence* to begin and compute the *six Months*, in the Manner as has been mention'd.

But in real Truth, (as has been often enough urg'd before) the *Living* is not hitherto made *void*; and when it is so declar'd to be by due Form of legal *Proceedings*, then is the Time to *begin*, and from *thence* to be computed; and the *Patron* will be safe enough, in his Right of *Presenting*, *six Months* after such Time of *Vacancy*, without any Danger of a *Lapse*.

They proceed upon the Head of a *Conviction* (as they call it) in *October 1715*; tho' (by the Way) 'tis only a Copy of a *Certificate in order to Conviction*, as has been intimated before; (however) supposing the Case was to be stated in the strongest Manner they could wish it to be put, supposing this was a real *Conviction*, (*quod non constat*) to carry in it the Force of a *Deprivation*, *ipso facto*, from the 5th
of

(172)

of *October 1715*, which is the *Date* the Clerk of the Crown gives it ; then (as my Lord *Croke* directs a *Computation* to be made of *six Kalendar Months*) the *six Months* would expire upon the *sixth of April 1716* ; and their *Præsentation* (such a one as it is) bears *Date* the third of *March 1715*, which is above a *Month* within the *Time of Lapse*, after which the *Ordinary* is excluded in *Point of Time from Collating*.

And was not a *Caveat* enter'd on Behalf of *Dr. Welton*, on the *first of March 1715* ? And has not that *Caveat* been *litigated* ever since the *Time of warning* it ? And whilst it is depending, no *Right* can be insisted on by *Way of Lapse, Pendente Lite* ; and if so, where is the *Foundation to hurry* on this *Affair* under the specious *Pretence* of their being only under an *Apprehension of a Lapse* ?

Is it not a *Maxim*, That *where the Church becomes litigious, Lapse shall not incur* ? Nay in the *Case*, (as they would have it) where a *Living*

ving becomes, *ipso facto*, void, no Lapse shall ensue, 'till *six Months* after such Time as the Ordinary has given Notice to the Patron, that the Living is void.

If, therefore, it were to be put upon this very Head, they will be safe, even for *six Months* after the Bishop shall notify a * *Vacancy*; and it cannot be yet a-while, 'till the Cause is heard, and the Living is found to be so *vacant*, by due Proceedings, and Sentence thereupon.

And it appears by the Act 13 *Eliz. Cap. 12, For Reformation of Disorders in the Ministers of the Church, &c.*

§. 8. Provided alway, that no Title Dyer, fo
to confer or present by Lapse, shall 377, 340
accrue upon any Depriuation, (*ipso* 369. Co
facto) but after *six Months* after 1. 6. fol
Notice of such Depriuation given 29.
by the Ordinary to the Patron,
1 Roll. 155.

And

* *Semestre tempus non à tempore Vacatio-
nis sed Notitiæ ipsius volumus computari. Ex-
tra. L. 3. t. 8. c. 5. Ibid. L. 1. t. 10. c. 3, 5.*

And in another of the 31st of *Eliz. Cap. 6*, relating to *Abuses in Presentation to Benefices*.

§ 7. *Provided* always, that no Title to confer or present by Lapse, shall accrue upon any *Uoydance* mention'd in this Act, but after six Months next after Notice given of such *Uoydance* by the Ordinary to the Patron.

So much is sufficient to shew, that if the Time for *Lapse* should be dated even from the very Time they would have it commence, they were safe by their Presentation made within the six Months: And so long as the Matter is depending and litigated, and by their having no Notice of a *Vacancy*, they will be safe for six Months longer, not to be computed 'till after Sentence of the Bishop, and Notice by him given to 'em, subsequent to such Sentence.

Now to shew the Necessity of such Sentence, previous to the Bishop's giving Notice of a *Vacancy*; (for he cannot give Notice of a Living

ving being *vacant*, until it is *prov'd* so, and he has so *declar'd* it to be.)

The Statute of 31 *Eliz.* Cap. 6,
runs thus :

§ 5. Be it farther enacted by the Authority aforesaid, That if any Person or Persons, Bodies Politick and Corporate, shall or do, any Time after the End of forty Days next after the End of this Session of Parliament, for any Sum of Money, Reward, Gift, Profit, or Benefit, directly or indirectly, or for or by Reason of any Promise, Agreement, Grant, Bond, Covenant, or other Assurance of or for any Sum of Money, Reward, Gift, Profit, or Benefit whatsoever, directly or indirectly, present or collate any person to any Benefice, with Cure of Souls, Dignity, Prebend, or Living Ecclesiastical, or give or bestow the same, for or in Respect of any such corrupt Cause or Consideration, That then every such Presentation, Collation, Gift, and Bestowing, and every Admission, Institution, Investiture, and Induction thereupon, shall be utterly void, frustrate, and of none Effect in Law.

And

Coke Pl

fol. 51

Co. l. 1

fol. 101

And that it shall and may be law-
ful to and for the Queen's Majesty,
her Heirs, and Successors, to pre-
sent, collate unto, or give, or bestow
every such Benefice, Dignity, Pre-
bend, and Living Ecclesiastical, for
that one Time or Turn only. And
that all and every person and per-
sons, Bodies politick and corpo-
rate, that from henceforth shall
give or take any such Sum of Mo-
ney, Reward, Gift, or Benefit,
directly or indirectly, or that shall
take or make any such promise,
Grant, Bond, Covenant, or other
Assurance, shall forfeit and lose the
double Value of one Year's profit
of every such Benefice, Dignity,
Prebend, and Living Ecclesiastical;
and the person so corruptly taking,
procuring, seeking, or accepting
any such Benefice, Dignity, Pre-
bend, or Living, shall thereupon,
and from thenceforth be adjudg'd a dis-
abled Person in Law, to have or enjoy
the same Benefice, Dignity, Prebend,
or Living Ecclesiastical.

10. Eliz. § 6. And be it farther enacted,
12. Cro. That if any person shall at any
c. 385. Time after forty Days next after
10. Car. the End of this Session of Parlia-
10. ment, for any Sum of Money,
Re-

Reward, Gift, Profit, or Commodity whatsoever, directly or indirectly, (other than for usual and lawful fees) or for, or by Reason of any Promise, Agreement, Grant, Covenant, Bond, or other Assurance, of or for any Sum of Money, Reward, Gift, Profit, or Benefit whatsoever, directly or indirectly, admit, institute, instal, induct, invest, or place, any Person in or to any Benefice, with Cure of Souls, Dignity, Prebend, or other Living Ecclesiastical, That then every such Person, so offending, shall forfeit and lose the double Value of one Year's Profit of every such Benefice, Dignity, Prebend, and Living Ecclesiastical. And that ^{2 Roll.} thereupon, immediately from and ^{465.} after the Investing, Installation, or Induction thereof had, the same Benefice, Dignity, Prebend, and Living Ecclesiastical, shall be estoons merely void: And that the Patron, or Person to whom the Advowson, Gift, Presentation, or Collation, shall by Law appertain, shall and may, by Virtue of this Act, present or collate unto, give, and dispose of the same Benefice, Dignity, Prebend, or Li-

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ving Ecclesiastical, in such Sort, to all Intents and Purposes, as if the Party so admitted, instituted, install'd, invested, inducted, or plac'd, had been, or were naturally dead.

§ 9. Provided always, that this Act, or any Thing herein contain'd, shall not in any Case extend to take away or restrain any Punishment, Pain, or Penalty limited, prescrib'd, or inflicted, by the Laws Ecclesiastical, for any the Offences before in this Act mention'd; but that the same shall remain in Force, and may be put in due Execution, as it might before the making of this Act; this Act, or any Thing therein contain'd to the contrary thereof, in any wise, notwithstanding.

Thus the *Ordinary's Sentence* is expected, altho' the *Statute* has deem'd a Person *incapacitated*, as much as if he were *actually dead*.

And it is plain, by the *Act of Uniformity*, 13 & 14 Car. 2, C. 4, tho' the Words of the Statute are very strong upon the *Deprivation*, IPSO FACTO,

F A C T O, as in the 5th Section:
And all and every such Person,
who shall neglect or refuse to do the
same, shall, **I P S O F A C T O**, be de-
priv'd of all his Spiritual Promo-
tions; and that from thenceforth
it shall and may be lawful to and
for the Patrons and Donors of all
and singular the said Spiritual
Promotions, or any of them, ac-
cording to their respective Rights
and Titles, to present or collate the
same, as tho' the Person or Per-
sons so offending or neglecting,
were dead.

Which Penalty is again recited
in the sixth, tenth, and eleventh
Sections.

Yet it was absolutely necessary to
have a *Sentence of Deprivation* re-
gularly pass in the *Ecclesiastical*
Court, as appears by the sixteenth
Section of the same *Statute* :

Provided always, that no Title
to confer or present by Lapse,
shall accrue, by any Avoidance of
Deprivation (**I P S O F A C T O**) by Vir-
tue of this Statute, but after six
Months after Notice of such Voi-
dance or Deprivation given by the

Ordinary to the Patron, or such Sentence of Deprivation openly and publicly read in the Parish-Church of the Benefice, Parsonage, or Vicaridge, becoming void, or where of the Incumbent shall be deprived by Virtue of this Act.

And the late Act of Parliament, on which the other Side found their Pretences, runs thus: **That then, and in such Case, such Person shall be taken, esteem'd, and adjudg'd, a Popish Recusant Convict, and, as such, to forfeit and be proceeded against, &c.** These Expressions of the Act, in the *Future Tense*, shall be adjudg'd and proceeded against, are plain Injunctions, that a Person must be *adjudg'd* regularly to be a **POPISH RECUSANT CONVICT**, and then be *proceeded against*, in order to make him liable to the intended Penalty of such Act.

And the very plain Sense of the Words imply, That a Person cannot be a *Popish Recusant Convict*, 'till he is *convicted* so to be.

So that this over-hasty Adversary need not be in any Manner of Uneasiness,

easiness, under the Apprehension of the *Lapse* of a Living as yet *not vacant*. It is ridiculous, and a mere Contradiction *in Terminis*, to say, That a Living can *lapse*, when at the same Time it is *full* of an Incumbent. And if the Conviction aim'd at, has not *all* the Requisites in Law, and by the *Act of Parliament* requir'd, can it be *good*? And in Case it comes *not* up to *every* Particular to what the Act has directed, is it not *invalid*?

Dr. *Shippen* should, in the first Place, therefore, prove his *Right* (by the *Presentation*) to contend in this Affair; and then, having prov'd his Interest, under the *Patronage*, he might be qualify'd to enter the *Lists*, and attack Dr. *Welton* with *Certificate* in Hand: But it will never answer his *Point*, 'till he alters his *Weapon*, and makes a *Conviction* of it, which it cannot be 'till it is *Fil'd*.

'Till, therefore, he makes Proof of this *Instrument* of his, and obviates the Objections of the other Side made against it, the Cause lyes *open*,

and not ready for a *Conclusion* and Hearing upon the *Merits*.

This is, therefore, to demonstrate, that the Apprehension is *frivolous*, which the other Side have intimated, for being in a *violent Hurry*, under Pretence of avoiding a *Lapse*, of which there is *no Danger*, *pendente Lite*, and which, *Lis pendens*, is not ripe for a Decision.

And if the adverse Party makes a false Step in these *hasty* Doings, by pressing the Hearing on, before Dr. *Welton* is admitted to make Proof of his Allegation, or has had the adverse Party's *Answers*, and before a full and fair *Hearing*, they will of Course give Occasion of appealing: And in Case there should be an Appeal to the *Arches*, the Cause could not be heard 'till the latter End of *Michaelmas* Term: And then what is become of their *six Months*, if the Doctrine of *pendente Lite* were not in Favour of *Presentation* against a *Lapse*? Nay, and after that, an Appeal to the *Delegates* might happen to keep it *pending* 'till *Easter* Term. So that their Haste appears

to

to be, not for Fear of a *Lapse*, but in order to *precipitate* the Cause to an *Hearing* before their own Fact is *prov'd*, and before that of the other Side is admitted and answer'd.

It is the customary *Method* of Proceedings in the *Ecclesiastical Courts*, where a Person has an Intention to make Use of an *Affidavit* or *Exhibite* in a Cause, to tender a *Copy* thereof, in due Time, to the other Side, before a Motion can be made for the *Court* to admit it.

To give, therefore, yet a farther Instance of *precipitant* and *irregular* Measures taken by the other Side, it is not unworthy remarking upon a very *remarkable* Paper, that was left but on the 3d of *September* last, at the House of the *Proclor* concern'd for Dr. *Welton*, the very *Night* before the appointed *Hearing* upon the *Petitions* of both Sides was to come on ; and which Paper was so left, in order, as is suppos'd, to be made another *Exhibite* in the Cause, to *substantiate*, or be *subsidiary* to the *Plea* concerning the *Copy*

of the *Certificate*, alledg'd and pretended to be a *Record of Conviction*.

To prove the *Irregularity* of dropping in such a (Sort of a) Thing (*as it is*) at such a Time, (as the Cause then stood) there is an evincing *Argument* at Hand, even from the very *subject Matter* it contains, which is as follows.

I do hereby CERTIFY, That in *Michaelmas Term* last past, *Samuel Reynolds*, Clerk of the Peace for the County of *Essex*, DID, according to the Directions of an *Act of Parliament*, [made in the first Year of his present Majesty's Reign, entitled, *An Act for the farther Security of his Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being Protestants, and for the extinguishing the Hopes of the pretended Prince of Wales, and his open and secret Abettors*] CERTIFY'D into his Majesty's Court of *King's-Bench*, at *Westminster*, " That at the
 " General Quarter-Sessions of the
 " Peace for the said County, held
 " by

“ by *Adjournment*, at *Chelmsford* in
 “ the said County, the 5th Day of
 “ *October* last, *Sir Fisher Tench*, Ba-
 “ ronet, and *Robert Dennett*, Esq;
 “ (two of his Majesty’s Justices of
 “ the Peace for the said County)
 “ did certify into the said General
 “ Quarter-Sessions of the Peace, in
 “ Manner and Form following,
 “ *viz.*

“ We *Sir Fisher Tench*, Bart. and *Essex* ff.
 “ *Robert Dennett*, Esq; two of his
 “ Majesty’s Justices of the Peace for
 “ the said County of *Essex*, (*Quo-*
 “ *rum unus*) do hereby certify,
 “ That on the 29th Day of *Septem-*
 “ *ber* last, we did issue out a Sum-
 “ mons, in Writing, under our
 “ Hands and Seals, directed to Dr.
 “ *Richard Welton*, Vicar of *East-*
 “ *Ham* in the said County of *Essex*,
 “ thereby requiring him personal-
 “ ly to be and appear before us
 “ the said Justices, at the *Angel-*
 “ *Inn* in *Great Ilford*, in the Coun-
 “ ty aforesaid, this Day, being
 “ the 1st Day of *October*, by Ten
 “ of the Clock in the Forenoon,
 then

“ then and there to take the Oaths
 “ exprefs’d and appointed to be ta-
 “ ken, in and by an Act of Parlia-
 “ ment made in the first Year of
 “ the Reign of his Majesty King
 “ George, [intitl’d, *An Act for the*
 “ *farther Security of his Majesty’s*
 “ *Person and Government, and the*
 “ *Succession of the Crown in the*
 “ *Heirs of the late Princess Sophia,*
 “ *being Protestants, and for extin-*
 “ *guishing the Hopes of the pretend-*
 “ *ed Prince of Wales, and his open*
 “ *and secret Abettors.*] And we,
 “ the said Justices, do farther certi-
 “ fy, That on the said 1st Day of
 “ October, *Randolph Faint*, one of
 “ the Constables of the Parish of
 “ *Low-Layton*, in the said County,
 “ did appear before us, at the *Angel-*
 “ *Inn* in *Great Ilford* aforesaid, and
 “ made Oath, That on *Friday*, the
 “ 30th Day of *September* last, in
 “ the Forenoon, he left the Sum-
 “ mons above-mention’d, at the
 “ Dwelling-House of the said Dr.
 “ *Richard Welton*, in the Parish of
 “ *East-Ham* aforesaid, with the
 “ Wife of the said Doctor *Richard*
 “ *Welton*.

“ *Welton*. And, lastly, we do cer-
 “ tify, That the said *Dr. Richard*
 “ *Welton* did neglect or refuse to ap-
 “ pear before us, to take the said
 “ Oaths, at such Time and Place as
 “ is above-mention’d. Given under
 “ our Hands and Seals, the 1st
 “ Day of *October*, *Anno Dom. 1715.*
 “ *Fisher Tench, Robert Dennett.*”
 And the said Clerk of the Peace did
 farther certify into the said Court of
King’s-Bench, “ That the said Cer-
 “ tificate of the said two Justices, is
 “ enter’d upon the Rolls of the said
 “ Sessions; and that the Name of
 “ the said *Richard Welton*, menti-
 “ on’d in the said Certificate, was
 “ (at the said *General Quarter-Ses-*
 “ *sions of the Peace*) publickly read;
 “ and that the said *Richard Welton*
 “ did, at the said *General Quarter-*
 “ *Sessions of the Peace*, neglect to
 “ take the said Oaths.” And I do
 farther certify, That the said *Certi-*
ficate of the said Clerk of the Peace,
 is recorded amongst the Rolls of the
 said Court of *King’s-Bench*, in a
 Roll there provided and kept for
 that Purpose only, according to the
 Directions

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Directions of the said Act of Parliament. Dated the 3d Day of September, in the third Year of the Reign of our Sovereign Lord George, King of Great Britain, &c. Annoq; Domini 1716.

*Richard Harcourt, Secondar'
Coron' Officii, in Cur'
Domini Regis, coram ipso
Rege.*

This new-fangl'd Certificate, sign'd by *Richard Harcourt*, Secondary of the Crown-Office, is in order to strengthen the Certificate of *Samuel Reynolds*, Clerk of the Peace for the County of *Essex*. And beginning first to explain that other Certificate, in the COUNTRY LATIN of *Samuel Reynolds*, he gives us to understand, in this ENGLISH Certificate, (and in his Way of PLAIN ENGLISH) saying, " I do hereby certify, That in Michaelmas Term last, *Samuel Reynolds*, Clerk of the Peace for the County of *Essex*, DID, according to the Directions of an Act of Parliament, &c. CERTI-
" FYED.

“ FYED. And so goes on to recite
 the Substance of the *former Certificate*,
 which is, That *Reynolds* there-
 by CERTIFY'D in the Court of King's-
 Bench at Westminster, how the Ju-
 stices CERTIFY'D at the general
 Quarter-Sessions of the Peace for
Essex, held, by Adjournment, at
Chelmsford, on the 5th of *October*
 last, and so repeats again the Ju-
 stices CERTIFICATE, (inserted in that
 of *Reynolds*.) And then he goes on
 with his *Paraphrase* upon Mr. *Rey-*
nolds's Certificate, and (with this
 Observation first of his own, *That*
the said Clerk of the Peace did far-
ther certify (not did CERTIFYED, as be-
 fore) *into the Court of King's-Bench*)
 he thus TRANSLATES *Reynolds*:
 “ That the said Certificate of the
 “ said two Justices, is enter'd upon
 “ the Rolls of the said Sessions; || and
 “ that the Name of the said *Richard*
Welton, mention'd in the
 “ said

|| Quòd Nomen præd' *Richard' Welton*, in
 Certificat' præd' mentionat', ad præd' gene-
 ral' Quarterial Session' Pacis, tent' per *Ad-*
journalment', dicto quinto die *Octobris*, Anno
 supradictò, apud *Chelmsford* præd', publicè
 lect' fuit. [*Vide Certificat. Reynolds.*]

“ said Certificate, was (at the ge-
“ neral Quarter-Sessions of the Peace)
“ publickly read.

Tho’ we should hold our selves
in some Measure oblig’d, in Com-
pliment of this Version of *crabbed*
Latin in *Lingua vernacula* ; yet let
us attempt to inquire into it, by
Virtue of our own little Smattering
in the first Language, and see whe-
ther he is *fidus Interpres* ; and if
not, we must abide by the *Latin* of
Mr. Reynolds, it being (as they say)
an Original.

The later Part of Mr. Reynolds’s
Certificate, then, runs thus : “ *Et*
“ *ulterius certifico quod Nomen*
“ *præd’ Richard’ Welton, in Certi-*
“ *ficat’ præd’ mentionat’ ad præd’*
“ *General’ Quarterial Session’ Pacis*
“ *tent’ per Adjournament’ dicto quin-*
“ *to Die Octobris, Anno supradicto*
“ *apud Chelmsford præd’ publicè*
“ *lect’ fuit.*

The Translation is, “ That the
“ Name of the said *Richard Welton*,
“ mention’d in the said Certificate,
“ was, at the said General Quarter-
“ Sessions of the Peace, publickly
“ read.

Now,

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Now, is saying [That his Name was read at the said general Quarter-Sessions of the Peace] a faithful Translation of [*Nomen præd' ad prædict' General' Quarterial Session' Pacis, tenet' per Adjournament', &c. publice lect' fuit ?*]

How comes this *emphatical* Expression us'd in Mr. *Reynolds's* Certificate, to be omitted, and left out, PER ADJOURNAMENT? whereby it appears it was at the next general Quarter-Sessions, (which was on *Saturday* the 1st of *October*) but at an *Adjournment*, (held on *Wednesday* the 5th of *October*) that such Name was so publicly read; and so it was not read at the *first Meeting* of such general Sessions, as the very Words || of the *Act of Parliament* expressly require, and
as

|| And if such Person who shall be so Summon'd to take the said Oaths, as aforesaid, shall neglect or refuse to appear and take the said Oaths at the said general Quarter Sessions, the Names of the Persons so certify'd, being publicly read at the First Meeting of the said Sessions, that then, and in such Case, such Person shall be taken, esteem'd, and adjudg'd a Popish Recusant Condict, &c.

as this new invented *Certificate* to make it come up to the *Act of Parliament*, tho' in Contradiction of *Mr. Reynolds*, has express'd it.

But, would they have a more candid *Interpretation* put upon this *Way of Translation* ? and pretend this was not so done with any sinister End or Design of imposing upon the Court, by introducing *a new Certificate-of-a-Certificate-of-a-Certificate*, and thereby to make the *Judge* believe, that the Name was read at the *first Meeting*, (as the *Act* requires, and the *Certificate* seems to express ?) Then ought they to confess, that the wording of this *Certificate*, in the *Translation* of the later Part of the other, is Παράρτησις ; and that the genuine and true *Construction* of the Words [*that the Name, &c. was at the said general Quarter-Sessions of the Peace, publickly read*] was, and is meant and intended (tho' otherwise express'd) to be, *That the Name, &c. was not read at the first Meeting of the general Quarter-Sessions, (as the Act requires) but*
was

was read at another Meeting of the general Quarter-Sessions per Adjournamentum.

Instruments and Exhibites, in a Cause, become common to both Sides, and may be accepted of by the Party on the other Side, in *quantum facit pro parte sua*.

They have already prov'd it to be per Adjournamentum, according to their *first Certificate*; and to endeavour to *contrast* with, and *contradict* their own Proof, is a little unaccountable.

For allowing it is still at a General Quarter-Sessions, tho' when held per Adjournamentum; yet it can never be allow'd, that a Meeting of such Sessions, per Adjournamentum, can be call'd the *first Meeting* of such Sessions. And the Act requires, that the Name of the Person to be accounted a *Convict*, shall be read at the *first Meeting* of the Sessions, and, in this Case, it was read at a Meeting (*not the first, but*) upon an Adjournment.

O

But

But after Mr. *Secondary* has thus *certify'd*, that *Reynolds* has *certify'd*, that the *Justices* have *certify'd* so, and so, *he* has something farther to *certify himself*, and that is as follows, in his own Words.

“ And I do farther *certify*, That
 “ the said *Certificate* of the said
 “ Clerk of the Peace, is *recorded*
 “ amongst the Rolls of the Court
 “ of *King's-Bench* in a Roll there
 “ *provided and kept for that Purpose*
 “ *only according to the Directions of*
 “ *the said Act of Parliament.*”

He has *certify'd*, as has been said a little before, (and play'd the *OEdipus*) in order to explain *Reynolds's Meaning*; and now here happens to be wanting another *Certificate*, from some Body, to explain his *Meaning*. For this *Certification* of his is very *ambiguous*, and carries in it a *double Entendre*; so that we must try two several Ways, (as it may be differently *Comma'd* and *Pointed*) if we can pick out the *Sense*; (tho' a third would be the shorter,

shorter, of putting it all in a Parentbesis.)

First, Does he mean that the Certificate of the Clerk of the Peace is recorded (among the *Rolls* of the Court of *King's-Bench*) in a Roll provided and kept for that Purpose only, according to the Directions of the Act of Parliament ?

The *Emphasis* of which Meaning, relates only to its being on a Roll provided for that Purpose only, as the Act of Parliament requires such Roll to be, "There to be recorded amongst the *Rolls* of the said Courts, in a Roll or *Rolls* there to be provided and kept for that Purpose only.

To certify this, is an Act of *Supererogation*, and to no Manner of Purpose ; for *Wintour* already has told us in his Answer to the second Interrogatory, "the Certificate is inroll'd [NOT RECORDED] in the Crown-Office, and the Roll contains no other Matter, Thing, or Proceeding ;" but says not, that its being so inroll'd, makes it a

Record. On the contrary, *Harnage*, in his Answer to the eleventh Interrogatory, says, *Wintour* told him, " *That the said CERTIFICATE was not FIL'D; but if it were FIL'D, it would THEN become a RECORD.*" *Ergo*, as it was NOT FIL'D, it was *no Record.*

A *Secondary* Meaning may be, That that Certificate of the Clerk of the Peace, is *recorded* (amongst the Rolls of the Court of *King's-Bench*, in a Roll provided and kept for that Purpose only) *according to the Directions of the Act of Parliament.*

And thus (tho' he ought not to take upon himself to be the Interpreter of an Act of Parliament) he insinuates it to be *a Record according to the Act.*

But either this is *false*, or else *Wintour's* Deposition on Oath is *false*;

Who says, in Answer to the second Interrogatory, " *That the Certificate is inroll'd* [NOT RECORDED] *in the Crown-Office, but the Roll not Fil'd;*" (and 'till *Fil'd*, as has been
been

been observ'd before, it is not of *Record*; and *Wintour* himself owns as much.)

This *Puzling-Riddle-of-a-Certificate*, is deliver'd as that *Oracle* of old,

Ibis, redibis, nunquam per Bella peribis.

Ibis, redibis nunquam, per Bella peribis.

Carrying two several Meanings, according as the Stops are plac'd.

And take it to be *interpreted* in either *Sense* afore-mention'd, it is expressly contrary to the *Oaths* of their own *Witnesses*, in their *Depositions*, who make it appear, that the *Certificate* or *Conviction* is *not recorded*.

And when a Party has once *produc'd and examin'd Witnesses* in a *Cause*, he cannot afterwards *except* against his own *Witnesses*, after *Publication*; nor help their *lame Proof* by *new Evidence*, *post Didiscita*

Publicata, (after he, or his Proctor, has seen the Depositions.)

It was improper, therefore, to bring in a *new Exhibite* to be *prov'd*, in order to help the *Defect of Proof* in their *own Witnesses*. Nor is it consistent in it self, that because *their Evidence* come not up to a *Proof*, full enough to answer their *Purpose*, this *new Certificate* is to be set up, *in order to do it*, tho' in plain *Contradiction* to their own *Depositions*.

The *Proof* of a *Record* must be by *Witnesses*, who examin'd the same with the *Record* it self, and not by a *Certificate*, or *new Instrument*, or *Exhibite*, to substantiate and stablish a *former*.

And, besides, a *Certificate* under the *Hand* of the Master of the *Crown-Office*, is not good, in such a Case, but ought to have been *under the Seal of the Court*.

And even in this *last Exhibite*, or *new Certificate*, Mr. *Harcourt* does not certify any *Proceedings* regularly made towards a *Conviction*. And 'till they have prov'd it a *Con-*
viction,

viction, they have done nothing to the *Purpose*, as to the Proof of their *Allegation*. Pag.

Which *Conviction* ought to have been obtain'd by regular *Proceedings*, and ought, accordingly, to have been *recorded* in due Form, before any *Proceedings* against Doctor *Welton* had been *begun* in the *Ecclesiastical Court* thereupon: And so, indeed, their *Allegation* lays, "*That it was Recorded;*" but it happens to appear, even by their *own Evidence*, that it was *not*; and when *Allegation* and *Proofs* are both found *deficient*, the other Party expects to be *dismiss'd*, 'till his *Adversary* CITES him *again*, upon another Head.

In short, it was apprehended, even by the other Side, that this *Invention*, of having a *new Certificate*, would not stand the *Test*, as not at all pertinent to their *Purpose*; so that out of *Modesty* it was *wav'd*, and not *insisted* upon at the Time fix'd on for hearing the *Petitions* on both Sides, which (as before Pag. mention'd) was adjourn'd from the

11th of *July* 1716, to the 4th of *September* following.

ember At which Time, the Bishop of
1716. *London* not being there, the *Chan-*
cancellor adjourn'd * the Hearing of
the *Petitions on both Sides*, to the
25th of the same Month.

ember Upon which Day the *Petitions*
1716. on both Sides were to be argu'd and
heard, as it was expected, before
the Bishop of *London*; but notwith-
standing his Absence, it was *pusb'd*
on to be debated, and was accord-
ingly argu'd by *John Hungersford*,
Esq; (*alone*) on Behalf of Doctor
Welton, (*Dr. Wood*, his Advocate in
the *Civil Law*, being absent, in the
Country) and by Sir *Constantine*
Phipps, and *Dr. Phipps*, a Civilian,
on Behalf of *Dr. Skippen*.

At which Time it was urg'd, on
Behalf of *Dr. Welton*, (as another
Instance of the *Over-Hastiness* on
the other Side) That they had
press'd

* *Quarto Septembris, 1716.*

Dominus assignavit ad audiendum volun-
tatem suam, super hinc inde petitis, in 25um
Diem Septembris instantis, decimâ horâ, tem-
pore matutino.

press'd on this Affair, sometimes talking in the Name of *Brazen-Nose* College, sometimes of *Freeman* and *Meare*, (as Patrons) and sometimes of *Dr. Shippen*; and yet had not, hitherto, produc'd any *Authority* from any one: Which ought to be a *Syndic*, under the common Seal, *if on Account of the College*; and a *Proxy* sign'd, if for *Freeman*, or *Meare*, or *Dr. Shippen*.

It was therefore insisted, That (in the first Place) a due *Authority*, or *Proxy*, might be produc'd and exhibited, in order to know (*after all*) who was the proper Party in *Judgment*, in the Cause against *Dr. Welton*, in order for Costs, in Case such Party should *fail* in Proof. And if there was no *Syndic* or *Proxy*, that a Time might be assign'd to * *shew it*, before any Thing should be farther mov'd against *Dr. Welton* in the Cause.

To

* Ad docendum de Procuratorio.

To sum up the Heads of their
PRECIPITANCY.

The Summons,
Over *hasty* in its *Service* ;
Too *short* in its *Return* ;
Wrongly certify'd, at an *Adjourn-*
ment.

The Certificate,
Not prov'd to be *Fil'd*, and a *Re-*
cord ;
No *Conviction* thereupon ;
If it was to be made a *Record*,
and a *Conviction*, no *Sentence* hither-
to upon it.

The Presentation undue,
Before the *Living void* ;
Before the *Right of Patronage*
prov'd.

The Cause,
As it stood on *Petitions* on both
Sides,
Not ripe for *Hearing* as to *Sen-*
tence.

And, after all,
No PROXY.

Upon

Upon the whole Debate, the *Chancellor* declar'd he would report it to the Bishop, in which *every one who knows Dr. Henchman's Character*, doubts not his Impartiality.

However, *unexpectedly*, before the Term came, whereby to call on the Cause regularly for *Sentence*, or without any previous *Monition* taken out by *Dr. Skippen* against *Dr. Welton*, or his *Proctor*, to hear *further* Proceedings and *Sentence* given; or to shew Cause why *Sentence* should not be given against him; or without giving any *Notice* to his *Proctor*, as *Dominus Litis*, *Dr. Skippen*, in the Vacation, in the Absence of *Dr. Welton*, and his *Proctor*, and without *Notice* given to *either*, as has been said, and without regularly praying a *judicial Sentence* to be given, and the Bishop's Chancellor then in the Country, got an *Institution* and *Induction*, under Seal, and, by Consequence, *Possession*.

Too much *Haste* is always the worst *Speed*: And it is certain that there are regular *Forms*, and Steps of Proceedings, in all *Courts* of Law
and

and Equity, which are not to be *leap'd* over at once : And whosoever gains (*as he thinks*) his Point, *per Saltum*, will as certainly make a *Slip*, and be forc'd to come *back again*, and perhaps lose his *Aim* into the Bargain.

And should Dr. *Shippen* have taken wrong or too hasty Measures in this Affair, so as to have run himself thereby into an *Error* ; and such an *Error* as *vacates* and *cancels* all he has *aim'd* at, and (*as it were*) enjoys ; would it not have been *better*, that he had gone on more *slowly* and *regularly*, and, in Consequence, with more *Sureness*, to attain his *End*?

For in Case *what* he has *obtain'd*, is through his *Irregularity*, and for Want of *due Proceedings*, *VOID*, *ipso Facto* ; should he not have rather had *Patience*, to have taken more *leisurely Steps* to effect his *DESIGN*?

To *instance*, therefore, what may be the *Consequence* of such his *hasty Procedure*, it is to be *noted*, That in Cases wherein, *as in this*, *Proceedings*

ings have gone on *Plenarily*, by Allegations and Examinations of Witnesses in the Registry, the Cause should, after *Publication*, have been call'd on to a **Conclusion*, according to regular *Practice*.

And thereupon the other Side must have Liberty to shew † Reason why such a *Conclusion*, or shutting up the Cause from farther Pleadings, should not be made.

Which Time for || *concluding* being so appointed, it would be incumbent

* *Terminus ad concludendum*. Deinde Procurator Actoris petat sibi dari *Terminum ad concludendum* in hujusmodi Causa; ipsumque reum ad idem assignari, vel addicendum Causam rationabilem, quare in hujusmodi Causa *concludi* non debeat. *Breckter. Procurat. Introduct. num. 41.*

† *Isto Termino adveniente, Procurator Actoris sic dicat*: Ego Procurator ipsius Actoris peto in hujusmodi Causa *concludi*, ac mecum pro *concluso* haberi. Ex adverso Procurator Rei, si quam habuerit Causam rationabilem, quare in Causa hujusmodi non fuerit *concludendum*, illam proponere debet. *Breckterus, ibid.*

• || *Protestatio de Appellando*. Et si illam Causam Juxta audire recusaverit, tunc Procurator

cumbent on the other Side to shew Cause, by *new* Pleadings, or other just Reasons, why it should not stand *so assign'd*: In Defect of which Objections to the contrary, the Judge will, of *Course*, decree such *Conclusion* in the Cause, and then assign a competent Time for hearing of * *Sentence*.

Which Time for hearing *Sentence* being come, the Party praying such Sentence, does so pray it either in Presence of his Adversary, or by Reason of his being † *Contumacious*, (which happens on Account of his Notice thereof, and *not* appearing.)

But

tor Rei protestare debet de Gravamine, & Appellando, &c. Sed si Procurator Rei non habuerit causam rationabilem hujusmodi, tunc Judex potest cum ambabus Partibus *concludere* in hujusmodi Causa, & pro *concluso* habere. Breckter. *ibid.* Num. 42.

* *Terminus ad audiendum Sententiam definitivam*. Et exposit Judex assignet Partibus hincinde Terminum competentem, *ad videndum & audiendum Sententiam definitivam*, in hujusmodi Causa ferri & promulgari. *Ibid.* Num. 43.

† *Accusatio Contumacie*. Illo Termino adveniente, Procurator Actoris dicat sic: Ego Pro-

But if the other Party does *appear* * at such Time, he has Opportunity either to *object* Reasons, by Law admissible, against the giving *Sentence* at such Time: And if his Reasons be *rejected*, he may thereupon *appeal*; or if he has no Objections to assign against hearing *Sentence*, he may then pray † *Sentence*

Procurator ipsius *A.* Actoris Partis adversa non comparentis accuso Contumaciam, ipsamque contumacem peto reputari, & in ejus Contumacia Sententiam definitivam pro me & Parte mea, & contra adversam, secundum Formam Petitionis pro me superius oblatae, in Scriptis fieri & promulgari. *Ibid. num.*

44. * *Protestatio contra Sententiam.* Sed si Procurator Rei fuerit praesens, potest sic dicere: Ego, Procuratorio nomine ipsius *B.* Rei, Protestor de non consentiendo in Sententiam definitivam ferendam ex eo, quod causas rationabiles proposui, & allegavi in Causa hujusmodi, & alias protestor de gravamine, & de appellando, &c. *Ibid. num. 45.*

† *Petitio Sententiae.* Vel potest Procurator Rei sic dicere secundum exigentiam materiae: Ego Procurator Rei peto Sententiam definitivam pro me & Parte mea, & contra Partem sibi in hujusmodi Causa adversam, ex eo quod insufficienter probavit suam intentionem in scriptis ferri & promulgari, &c. *Ibid. num. 46.*

tence to be given, on his own Behalf, by Reason the Plaintiff has fail'd in the Proof of what he has alledg'd.

Upon which, if the Judge gives not Sentence for him, the Defendant has a Right of || Appeal.

So far as to the Previous Regular Steps, which ought to be pursu'd, in order to the obtaining of a Sentence.

Whereupon it is to be observ'd, That here was, first of all, no Conclusion of the Cause (or *ad Sententiam ex primâ*) pray'd after Publication, and, of Course, no Time pray'd for hearing Sentence; which is a subsequent Assignment, after a Cause stands actually concluded. And upon omitting of these previous Requisites towards obtaining Sentence, a Cause proceeded in (as has been said before

|| Si Sententia fuerit contra Reum, seu Procuratores Rei, dicat sic: Ego Procurator ipsius B. Rei, dico hujusmodi Sententiam, si sic dici mereretur, fore injustam & iniquam, & protestor de gravamine & appellando, &c. *Ibid.*

before this ought to be, and was) PLENARILY, could not be, without such *Preliminaries*, ripe for *Sentence*.

Let us now remark as to † *Sentence* it self; and how, when even it is actually, DE FACTO, given, it may be, IPSO JURE, NULL and VOID; for so will it be, if not obtain'd according to the *Formality* which the *Law* requires, in Point of *Practice*.

To furnish a few Examples, it is notorious,

That if a Party be oblig'd to undergo *Proceedings* in a Cause, during *Vacation*, or the Time of *Harvest* or *Vintage*, a *Sentence* given at such Times, is NULL in it self. * If.

It is obvious, that in this Case a *Determination* was given in *Vacation*.

P Idly, That

† Sententia est judicialis Diffinitio, quæ finem imponit Controversiæ. Brechter. Proc. Jud. c. 14, fol. 140.

* Si quis, tempore Messium vel Vindemiarum compellatur litigare, si tum Sententia lata fuerit, erit nulla. Brechter. Proc. Judiciar. Tit. 15. Pag. 283.

dly. That a Sentence given against a Person *absent*, and not pronounc'd as *contumacious*, (which is for Want of appearing upon his or his Proctor's *Privity* of such Time) such Sentence is, in such Case, **IN V A-L I D.**†

Dr. Welton was absent, and not pronounc'd contumacious.

Idly. Sentence is **VOID**, unless the Person against whom it is given, be thrice, or peremptorily *call'd*, or *summon'd*, and *cited*, at his usual Abode, to be present thereupon; or if his Proctor or Agent's Attendance (if he has any) to defend him, be not demanded, the Sentence given is of no *Validity*. ||

Dr. Welton, and his Proctor, had neither any Notice when a Determination was TO BE MADE, or when it WAS MADE against him.

If

† Sententia lata contra absentem, non contumacem, non valet. *Ibid.*

|| Item nulla est, nisi Pars contra quam lata est, tribus Edictis, vel uno peremptorio, fuerit

If a *Sentence* be given, and not in IV
Writing, it has NO FORCE. *

*No Sentence was given reduc'd in
Writing.*

The *Sentence* is also NULL, Vt
where any Steps of *Regularity* in
Proceedings are omitted or misman-
ag'd: And *Sentence* is especially
requir'd to be given *publickly*, by the
P 2 pro-

fuerit evocata; & si non inveniatur citan-
dus, nihilominus ad domum suam Citatio
fieri debet, & sui requirendi fuit, an aliquis
sit qui defendere eum velit, aliter enim Sen-
tentia non valet. *Ibid. pag. 284.*

Decreti Pars 2, Quest. 9. c. 2, C. F. C. fol. 164.

*Absente Adversario, Sententiam ferre non li-
cet. Caveant Iudices Ecclesiæ, ne absente eo
cujus Causa ventilatur, Sententiam proferant,
quia irrita erit.*

Decret. Pars 2. q. 9. c. 2. C. F. C. fol. 164.

*Quæ in absentes geruntur, omnino evacuen-
tur. Omnia quæ adversus Absentes in omni
negotio aut loco aguntur, aut judicantur, om-
nino evacuentur, quoniam Absentem nullus
addicit, nec ulla lex damnat.*

Decreti Pars 2. Q. 9. c. 11. C. F. C. fol. 164.

*Absente Adversario, non audiatur Accusa-
tor; nec Sententia, absente alia Parte, à Ju-
dice dicta, ullam obtineat firmitatem.*

* *Item, nisi lata fuerit in Scriptis, non va-
let. Brechter. Proc. Judic. Tit. 15. p. 286.*

proper Judge, sitting in a *judicial Manner in open Court.* ||

No judicial Sentence was given in open Court.

From having Recourse, therefore, to the Proceedings in a Cause, we may gather Hints, and make just Observations, whether, or no, the *regular Forms and Steps in Proceedings*, are duly made; whether any substantial Omission is to be found, or a *preposterous Method* us'd in the *Order of Proceedings*; and upon such *irregular Slip*, by an Omission, or *preposterous Order of Proceedings*, a Sentence, tho' IPSO FACTO given in a Cause, is, IPSO JURE, *null and void.*†

And

|| Item Sententia, citra solitum Ordinem Judiciorum à Præside prolata auctoritatem Rei judicatæ non obtinet. *Decreti Pars 2. c. 41. quest. 6. §. diffinitiva. C. F. C. fol. 149.*

Item nulla est Sententia, si aliquid de Judicii tramitibus obmittatur vel pervertatur. Est autem Judicii trames, ut Sententia feratur à Judice sedente pro Tribunali. *Brechter. Proc: Judic. Tit. 15. p. 287.*

† Ad Processum recurrendum erit, & videndum, anquid Ordo Judicii fuerit legitime

And an *Error* of this Kind, which the *Law* calls a *Nullity* of *Proceedings*, is to be laid hold of, and objected, in order to *quash*, and entirely make *void* the whole *Proceedings*, by Reason of such *Irregularity*. And such *Nullity* is pleadable by the *Civil Law*, even for *thirty* Years after, and for *twenty* Years after by the *Canon Law*. ||

In which Case, of a *Nullity* in *Proceedings*, the Party *aggriev'd* herein, may (if he does *not* appeal) apply even to the same Judge, * by citing the Adversary to answer in a

P 3

Cause

mè servatus, vel aliquid ex Substantialibus *omissum*, aut Ordo *præposteratus*, puta, circa Libellum, id est, modum agendi intentatum, litis contestationem, juramentum de calumnia (quando petitur) *Causæ Cognitionem*, & factam *Conclusionem*: Quæ dicuntur *Palmites* & *Substantialia* *Ordinis judicialis*, & illis, vel aliquo ipsorum *omissis* vel *præposteratis*, *Sententia* non tenet. *Vant. de Null. Sent. fol. 27. §. 7.*

|| Potest *Nullitas* usque ad triginta *Annos*: secundum *Canonistas* usque ad viginti, proponi. *Brecht. Proc. Judic. c. 15. p. 204.*

* Pars adit *Judicem*, citato *Adversario*, offert *Libellum*, in *Causa Nullitatis*, & *Actionem* instituit, tunc siquidem ordinariè lite

con-

Cause of *Nullity*, and plead his Fact, setting forth the particular *Errors* by Way of Libel, and so go on according to such other Proceedings, as are *regular* to be had and done in *Causes*, unto *Sentence*: Whereupon, the *previous Sentence* will be *revok'd*, and pronounc'd *void*, on Account of such *Nullities* as are made appear to be in the *Formality* of the former *Proceedings*. And the *Merits* of the *Cause*, or *principal Matter* heretofore in *Dispute*, is to be appointed *to be heard over again*; which *Sentence* may be so set aside, (as has been said before) and a Re-hearing granted, *even after many Years*, by Reason of *erroneous Measures* taken in the obtaining of it.

Having

contestata & alio processu proceditur, eoque casu Iudex principaliter dando Sententiam cognoscet: Si enim Nullitatem compererit, dicit, *Pronunciamus & diffinimus Sententiam per nos prius latam esse nullam, quapropter Causam iterum esse audiendam decernimus*. Et ideo si principaliter super Nullitate agitur, hoc usque ad triginta Annos inclusive fieri potest, semper enim peti potest, ut Sententia annulletur. *Brecht. Proc. Jud. cap. 15. pag. 205.*

Having already taken Notice of divers *Errors, antecedent* to, and concerning a *Sentence*, such as occur applicable to this *Case*, it will be allow'd enough have been instanc'd, as capable to *disannul Proceedings*, and make them, *Ipsa Facto, void*.

But it may not be amiss to remark yet a little upon *another*, and that a *principal Omission* and *Nullity*; which is a *false Step* even from the very *Beginning*, and which, alone, would be such an *Error*, as would vacate and set aside the whole *Proceedings*.

And that is, the Want of a *lawful Authority* and *Proxy* || to appear in the Cause against Dr. *Welton*.

This should either be in *Writing*, or by the *Party principal* appearing in *Judgment*, and there constituting his *Proctor*; and if in *Writing*, ought to be made appear, by an exhibited

P 4

Proxy

|| *Nemo Procurator idoneus sine mandato reperitur. Brechter. Proc. Jud. p. 263.*

Non auditur quis tanquam alterius Procurator, nisi habeat mandatum legitime factum. Decret. Greg. l. 1. Tit. 38. De Procura:oribus.

Proxy left in the *Registry*; or otherwise, if *personal*, by the *Acts* of *Court*, setting forth an *Appointment* made by the *Party* of his *Proctor*, in *open Court*. And it does not appear in the *Registry*, or by *Act* of *Court*, that there was any *Proxy* from *Dr. Skippen*, or any *Constitution* of a *Proctor* by him or any other. And *what appears* not so to be, is, in *Law*, accounted as a *Non-entity*.||

Thus,

|| Si aliquem non fuisse citatum, neque constitutum Procuratorem, minusque Juris Ordinem servatum, per Inspectionem Actorum & Processus ejusdem Cause probabitur. Bart. l. 2. C. de Error. Advoc. & in l. hi qui ad Civilia. C. de Appell. & in l. 1. ff. Si tut. vel cura. appell. Bal. in l. Si contra C. de Appell. Fas. in l. 4. Sect. condemnatum colum. 2. ff. de re jud. & domi Abb. post Joan. Andr. circa fin. d. c. ad sedem. de restitut. Spolia. & in cap. quoniam contra. super ultima Gloss. ubi Felin. colum. 15. vers. limita uno modo. & Joan. Andr. post Spec. in Tit. de Senten. Sect. ut autem, in Verb. & nota secundum quosdam, Quia quod non apparet, dicitur non esse. l. in leg. ff. de contrahen. empt. c. solennitates, in fin. de consecr. distinct. 1. ponit Afflict. decis. 43. num. 5. & praemissa tenet Alex. cons. 59. viso Tit. colum. 5.
 nunt.

Thus, if a Person pretends to *appear in Judgment* in another's Name, and, upon Search into the *Proceedings*, his *AUTHORITY so to do*, does not appear, a *NULLITY* arises, in Consequence, throughout *all the Proceedings*, || which become, whether *judicial or extrajudicial, ipso Jure*, *NULL and VOID*, without *such legal Authority*. *

It

num. 17. lib. 4. & conf. 53. quoniam 2. colum. & conf. 105. Ponderatis, colum. 2. lib. 5. Abb. conf. 92. Christi nomine, volumine primo, cum aliis de quibus per Decium, d. conf. 483. pro resolutione, num. 6. & Bar. in conf. 98. apparet in si. & Mar. de Jano. in Tract. de probanda negativa, Tomo decimo tertio, Cor. conf. pen. lib. 1. Vant. de Null. Sent. fol. 124. Sect. 18.

|| Si comparentes alieno nomine in *Judicio* interfuerint, videndum erit qualiter de eorum potestate constet; nam si non apparebit, *Nullitas* de plano procedet. *Vantius de Nullitatis, fol. 23. Sect. 5.*

* Necessè est quod appareat formiter de potestate legitimâ, alieno nomine comparentis; aliâs *Processus* erit *ipso Jure nullus*; quod procedit tam in *Actis judicialibus* quàm *extrajudicialibus*. *Barto. in l. si quis infic. ff. dep. & in l. quod alterius, ff. de reg. jur. & aliis adductis per Alex. conf. 74. viso colum. 2. l. 3. Vant. de Null. fol. 382. Sect. 73.*

It is *enough*, in such a Case, to alledge, That a Person *appearing* in the Cause as a *Proctor*, is not *Proctor* for his *pretended* PRINCIPAL.

And that he is not so, may be *shewn*; for that the *Contrary* of such *Affertion* does not *appear*, from the *Proceedings*, in the Cause, to wit, *That the Person so appearing, is Proctor for his pretended Principal*: Which Negative, *That he is not so*, will, thereupon, be taken as prov'd from the very Acts and Proceedings in the Cause; because what is not *made to appear* therein, is accounted not to be. ||

And

|| Imprimis, quòd non fuerit talis, ostendi consuevit ex eo, quòd contrarium ex Processu non constat, videlicet ipsum comparentem fuisse talem: Nam tunc ex eisdem Actis eo ipso censetur probata negativa, videlicet talem non fuisse; quia quod ibi non apparet, dicitur non esse. *l. fin. C. de rebus credi. ubi per illum tex. hoc ponunt Doctores, & l. in lege ff. de contrahend. empt. c. cum ad sedem. de restitut. spol. c. Solennitates in fin. de consecr. distin.*
 1. Alia enim probantur per Inspectionem Actorum, ut dicit Barto. in *l. 2. C. de erroribus Advoc. & in l. hi qui ad Civilia. C. de App.*

And this Want of a *sufficient Authority*, makes a || *Defect* in the very *first Step*, or *Citation*, in the Cause ; so that a Person may *object*, in such a Case, *as not being duly conven'd in Judgment*. And this Sort of NULLITY is call'd *Incurable*. And this *Objection* holds good to be made Use of, *at any Time*, in a Cause, to VACATE the *Proceedings*, and even *Sentence* it self. †

And

App. & l. 1. ff. si tutor vel cura. appel. ponit Bal. in l. si contra. C. de appellat. & in cap. quoniam contra per illum tex. in fin. ubi scribentes, extra de probat. Vant. de Null. Sent. fol. 325. Sect. 62.

|| Talis insuper Defectus Potestatis includit & continet in se Defectum Citationis quoad ipsos principales Dominos ; quia processus cum falso Procuratore factus (principali aliter non vocato) etiam ex Defectu Citationis impugnari potest ; ideo Nullitatem hanc Moderni vocant insanabilem ; ut *Staphileus in d. tract. de liter. grat. fol. 145. & Sarvien. in Comment. regular. in Compendio utriusq; Signatura, fol. 185, prima facie*. Idcirco in hoc erit summo opere advertendum. *Vant. de Null. Sent. fol. 324. Sect. 61.*

† Et regulariter ex isto capite contra Processus & Sententias apponit, quod qui in iudicio alieno

And what is NULL and VOID from the *Beginning of a Cause*, cannot be made valid by *Length of Time*; more especially the Want of a *Proxy*, which *Defect* gives Handle for an *Objection*, as to the NULLITY of all *Proceedings*, even a thousand Years after.*

It is hence to be noted, that whensoever there is either a *tacit Omission* of any Matter of *Fact*, or a *wrong Representation* thereof, * or *Irregularities* in *Proceedings*, in a Cause pending in the *Ecclesiastical Court*,

alieno nomine (puta quasi Procurator) comparuit, non fuit talis qualem se gessit. *Vant. de Null. Sent. p. 324. Sect. 61.*

* Quæ ab Initio nulla sunt, tractu temporis non convalescant. *L. Quæ ab Init. ff. de Regul. Jur. Cap. non firmatur, extra cod. Tit. Cap. Auditis de Elect.* Maxime si ex Defectu *Mandati*; quoniam si de eo non constabit, etiam usque ad mille annos super Nullitate Actus agi poterit. *Baldus in l. 1. C. de rebus alien. non alien. & l. 2. C. Si ex fals. instrum. declarat. Curtius junior cons. 77. quem secutus est Rot. ut per Cassad. Deciso. 3. de Procurat. Sarvien. super Regul. de non iudicando in Compens. fol. 85. num. 73. Vant. de Null. Sent. fol. 134. Sect. 8. Idem, fol. 323. Sect. 59.*

|| Tacita Veritate, & suggesta Falsitate.

Court, tho' a *Decree* passes in Behalf of a Person under such his *own Act* and Error, and continue for a while, it is *voidable*, and there may be a long *Arrear*, as to the Perception of Profits, &c. accountable for, in Case a Person, by such *Mistakes*, gets into Possession, wrong *Ipsò Jure*, payable to the Person by such Means turn'd out wrong *Ipsò Facto*.

It is accounted in all Cases (of *Meum & Tuum*) where Possession of a *Freehold* is sought for, that it is absolutely requisite to have such proper Methods and Proceedings us'd, as may bind and preserve the *Title*, and leave no Loop-hole, Flaw, or Umbrage, whereby to be call'd in Question hereafter.

To apply to the Case in Hand: If Dr. *Skippen* had been patient, 'till the *regular Steps* of going thro' the Cause in *Doctors-Commons* had been taken, he would thereby have been altogether *safe*, if, after an Appeal, the *Court* had given or confirm'd a *Sentence* on his Behalf.

Like-

Likewise, as to the *Right of Advowson, Patronage, or Presentation*, had he waited until a *Decision* had been made upon those *Points*, it would have prevented the same from ever being again disputed.

And if by *Prohibition* it had been try'd, as to the *Construction* of the *Act*, and concerning *Possession, Induction, and Freehold*, at the *Common Law*, it would have then gone thro' the regular and proper *Channels* as to those *Points*.

But if a *Diffidence*, as to the *Consequence* of such *Decisions*, could be an *Inducement* to hurry into an *Irregularity*, purely to get into *Possession*, it is however (as capable of being *superseded*) a very *precarious Title* to hold by, and what every *Body* would not be very fond of *usurping*.

Now, the *Certificate of Popish Recusancy*, for not taking the *Oaths* according to *Summons*, has appear'd (by what has been hitherto said) to be the *Foundation* upon which this *Prosecution* was commenc'd against
Dr.

Dr. *Welton*; and *That* has been examin'd into fully, and shewn to be *precipitate, irregular, not Fil'd on Record, no Conviction, and, if it were so, carries no Force for amoving an Incumbent out of Possession, according to the Laws in Being; that there has been no Voidance prov'd, nor Sentence thereupon; no Right of Patronage prov'd, nor even any Proxy; which, with other irregular Steps, are sufficient to quash and annul the whole Proceedings.*

To account, therefore, for a farther *Subterfuge*, which was after all recurr'd to in this Affair on Behalf of Dr. *Skippen*.

Upon the very Day assign'd for *Septem* hearing the *Petitions* on both Sides, ^{25, 17} and not 'till then, it was introduc'd, in the Argument only of the Council, (without any *Allegation laid before, or even then exhibited in Writing, or alledg'd, apud Acta, to that Effect*)
 “ That Dr. *Welton* had not taken
 “ the Oaths by the 23^d of *January*,
 “ according to the Clause in the
 “ late Act, viz.

§ 8. Be it farther enacted by the Authority aforesaid, That all and every the Person and Persons aforesaid, that do or shall neglect or refuse to take the said Oaths, and subscribe thereto as aforesaid, in the Courts and Places, and at the respective Times aforesaid, shall be, Ipso Facto, adjudg'd incapable, and disabled in Law, to all Intents and Purposes whatsoever, to have, occupy, or enjoy the said Office or Offices, Employment or Employments, or any Part of them, or any Matter or Thing aforesaid, or any Profit or Advantage appertaining to them, or any of them; and every such Office or Place, Employment or Employments, shall be void, and is hereby adjudg'd void.

This new-started Hint, (only mention'd *obiter*) if it were never so material, could not *operate* in the Cause brought against Dr. *Welton*, upon *another Foot*; which was only to prove him a *Recusant Convict*, for not appearing, in *October 1715*, according to *Summons*, at the *Quarter-*

THE

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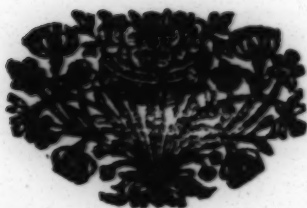


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THE



T H E
N E W M I N I S T R Y .

The *COUNTRY GIRL*,
An ODE.



THE Country Girl that's well inclin'd
To love, when the young 'Squire grows
kind,
Doubts between Joy and Ruin;
Now will, and now will not comply,
To Raptures now her Pulse beats high,
And now she fears undoing.
But when the Lover with his Prayers,
His Oaths, his Sighs, his Vows and Tears,
Holds out his proffer'd Treasure;
She quite forgets her Fear and Shame,

And quits her Virtue, and Good-Name;
For Profit mixt with Pleasure.

So virtuous P —, who had long
By Speech, by Pamphlet, and by Song;
Held Patriotism's Steerage,
Yields to Ambition mixt with Gain,
A Treasury gets for H — V —,
And for himself a Peerage.

Tho' with joint Lives and Debts before,
H —'s Estate was cover'd o'er,
This *Irisb* Place repairs it;
Unless that Story should be true,
That he receives but Half his Due,
And the new Countess shares it.

'Tis said, besides, that t'other H —
Pays Half the Fees of Secretary
To B —'s ennobl'd Doxy;
If so ----- good Use of Pow'r she makes,
The Treasury of each Kingdom takes,
And holds them both by Proxy.

Whilst her dear L --- obeys his Summons,
And leaves the noisy H --- of C ---,
Amongst the L --- to nod;
Where, if he's better than of old,
His Hand, perhaps a Stick may hold,
But never more a Rod.

Unheard of, let him slumber there,
As innocent as any P ---,
As prompt for any Jobb?
For now he's popular no more,
Has lost the Pow'r he had before,
And his best Friends the Mob.

Their

Their Fav'rites shou'dn't soar so high,
 They fail him when too near the Sky,
 Like *Icarus's* Wings ;
 And Popularity is such,
 As still is ruin'd by the Touch!
 Of gracious-giving Kings.

Here then, O *B-----* ! thy Empire ends,
*A-----*le shall with his Tory Friends
 Soon better Days restore ;
 For *Enoch's* Fate and thine are one,
 Like him *translated*, thou art gone
 Ne'er to be heard of more.

The OLD COACHMAN,

A New Ballad.

WISE *Caleb* and *C-----*, two Birds of a Feather,
 Went down to a Feast at *N---'s* together :
 No matter what Wines, or what choice of good Chear,
 'Tis enough that the Coachman had his Dose of Beer.
 Derry down, down, high derry down.

Coming Home, as the Liquor work'd up in his Pate
 The Coachman drove on at a damnable Rate :
 Poor *C---t*, in Terror, and scar'd all the while,
 Cry'd, " Stop ! Let me out ! Is the Dog an *Argyle* ?
 Derry down, &c.

But he soon was convinc'd of his Error ; for, lo,
John stop'd short in the Dirt, and no further would go.
 When *C-----* saw this, he observ'd with a Laugh ;
 " This Coachman, I find, is your own, my Lord
 Bath."
 Derry down, &c.

Now the Peers quit their Coach, in a pitiful Plight,
 Deep in Mire, and in Rain, and without any Light;
 Not a Path to pursue, nor to guide them a Friend;
 What Course shall they take then, and how will this
 end?

Derry down, &c.

Lo ! Chance the great Mistress of human Affairs,
 Who governs in Councils, and conquers in Wars;
 Strait with Grief at their Case (for the Goddesses well knew,
 That these were her Creatures, and Votaries true :)

Derry down, &c.

This *Chance* brought a Passenger quick to their Aid.
 Honest Friend, can you drive?-----What should ail
 me ? he said.

For many a bad Season, thro' many a bad Way,
 Old O--f--d I've driven, without stop or stay.

Derry down, &c.

He was once over turn'd, I confess, but nor hurt :
 Quoth the Peers, it was we help'd him out of the Dirt :
 This Boon to thy Master, then prithee require,
 Take us up, or here we must wander all Night.

Derry down, &c.

He took them both up, and thro' thick and thro' thin,
 Drove away for St. James's, and brought them safe in,
 Learn hence, honest Britons, in spite of your Pains,
 That O----d, old Coachman, still governs the Reins.

Derry down, down, big derry down.

Labour in Vain.

A SONG, an Hundred Years old.

To the Tune of *Molly Mogg.*

YE Patriots, who twenty long Years
Have struggled our Rights to maintain:
View the End of your Labours and Fears,
And see them all ended in Vain.

Behold! in the Front stands your Hero,
Behind him his Patriot Train:
Hear him rail at a Tyrant and Nero;
Yet his Railing all ended in Vain.

Then let him attack a Convention,
And calling for Vengeance on *Spain*:
What Pity such noble Contention
And Spirit should end all in Vain!!

That the Place Bill be got for the Nation,
Was only a Shadow, is plain:
For now 'tis a clear Demoustration,
The Substance is ended in Vain.

His bloody and horrible Vow,
Which once gave the Courtiers such Pain,
No longer alarms them now,
For his Threats are all ended in Vain.

What though the Committee have found,
That *Or---*'s a Traitor in Grain;
Yet wiser than they may compound,
And Justice be ended in Vain.

How certain would be our Undoing,
Should the People their Wishes obtain?

Then to save us from Danger of Ruin;
He has ended our Withes in Vain.

Then let us give Thanks, and be glad,
That he knew how our Passion to rein,
And wisely prevented the Bad,
By ending the Good all in Vain.

About *Brutus* let *Rome* disagree,
We won't from our Praises refrain;
Our *Brutus* has more Cause than he
To declare even Virtue in Vain.

Three Thousand five Hundred a Year
He valu'd it not of a Grain;
His Scorn of such Filth is most clear,
Since that too he ended in Vain.

Corruption he hates like a Toad,
And he calls it the National Bane,
Yet damn'd T.....s, his Virtue to load,
Say, that all is not ended in Vain.

He rejects all Employments and Places,
And thinks ev'ry Pension a Stain:
Yet T.....s, with their damn'd sly Faces,
Say, that all is not ended in Vain.

In spite of his Caution and Care,
To avoid the Appearance of Gain,
Say those Tories, his Wife has a Share,
And all is not ended Vain.

A New ODE.

*To a great Number of Great Men, newly
made.*

Jam nova Progenies.——

By the Author of, The COUNTRY MAID;

SEE a new Progeny descends
From Heav'n, of *Britain's* truest Friends,
O, Muse, attend my Call!
To one of these direct thy Flight,
Or to be sure that we are right,
Direct it to them all.

O, *Clio*! these are Golden Times;
I shall get Money for my Rhimes,
And thou no more go ratter'd:
Make haste then, lead the Way, begin,
For here are People just come in,
Who never yet were flatter'd.

But first to C--- -t fain you'd sing
Indeed he's nearest to the K---
Yet careless how you use him:
Give him, I beg, no labour'd Lays;
He will but *promise*, if you praise,
And laugh if you abuse him.

Then (but there's a vast Space betwixt)
The new-made Earl of B--- comes next,
Stiff in his popular Pride:
His Step, his Gait, describe the Man;
They paint him better than I can,
Waddling from Side to Side.

Fach Hour a diff'rent Face he wears,
 Now in a Fury, now in Tears,
 Now laughing, now in Sorrow ;
 Now he'll command, and now obey,
 Bellows for Liberty To-day,
 And roars for Pow'r To-morrow.

At Noon the Tories had him tight,
 With staunchest Whigs he supp'd at Nighr,
 Each Party try'd t' have won him ;
 But he himself did so divide,
 Shuff'd and cut from Side to Side,
 That now both Parties shun him.

See you old, dull, important Lord,
 Who at the long'd-for Money-Board
 Sits first, but does not lead :
 His younger Brethren all Things make ;
 So that the T-----y's like a Snake,
 And the Tail moves the Head.

Why did you cross God's good Intent ?
 He made you for a Pr---f---t ;
 Back to that Station go :
 Nor longer act this Farce of Pow'r,
 We know you miss'd the Thing before,
 And have not got it now.

See valiant C---m, val'rous S---r,
 Britain's two Thunder Belts of War,
 Now Strike my ravish'd Eye :
 But, oh ! their Strength and Spirits flown,
 They, like their conqu'ring Swords, are grown
 Rusty with lying by.

Dear, *Bat*. I'm glad you've got a Place,
 And since Things thus have chang'd their Face,
 You'll give Opposing o'er ;
 'Tis comfortable to be in,
 And think what a damn'd while you've been,
 Like *Peter* at the Door.

See who comes next---I kiss thy Hands,
But not in Flattery, S---I S---;

For since you are in Power,
That gives you Knowledge, Judgment, Parts;
The Courtier's Wiles, the Statesman's Arts,
Of which you'd none before.

When great impending Danger shook
Its State, old *Rome* Dictators took
Judiciously from Plough:
So they (but a Pinch thou knowest)
To make the Highest of the Lowest,
Th' Exchequer gave to you.

When in your Hands the Seals you found,
Did it not make your Brain go round?
Did it not turn your Head?
I fancy (but you hate a Joke)
You felt as *Nell* did when she 'woke
In Lady *Loverule's* Bed.

See *H---y V---e* in Pomp appear,
And, since he's made *V---e-T---r*,
Grown taller by some Inches;
See *Tw---* follow *C---s* Call;
See *Hanoverian G---r* and all
The black Funereal *F---s*.

And see with that important Face
Beranger's Clerk, to take his Place,
Into the *T---y* come;
With Pride and Meanness act thy Part,
Thou look'st the very Thing thou art,
Thou *Bourgeois Gentilhomme*.

Oh! my poor Country! is this all
You've gain'd by the long-labour'd Fall
Of *Wa---le* and his Tools?

(10)

He was a Knave indeed -- what then ?
He'd Parts---but this new Ser of Men
A'n't only Knaves, but Fools.

More Changes, better Times, this Isle
Demands; oh! *Chesterfield, Argyle,*
To bleeding *Britain* bring 'em :
Unite all Hearts, appease each Storm,
'Tis yours such Actions to perform,
My Pride shall be to sing 'em.

The CAPUCIN.

*A New BALLAD. To the Tune of, Ye Commons
and Peers.*

Ecce iterum Crispinus, & est mihi sepe vocandus.

WHO at *Paris* has been,
Has a *Mendicant* seen,
Who for for Charity follows to dun you,
Offer him what you will,
He refuses it still;
For he's sworn that he'll never take Money.

But near him there stands,
With two open Hands,
A Creature that follows for Hire,
Any Gifts that you make
He'll readily take;
And at Night he accounts with the Fryar.

So the great E--- of B---,
Has sworn in his Wrath,
That he'll never accept of a Place;
Neither Chancellor he,

Nor Treas'rer will be,
And refuses the Seals and the Mace.

But near him * a Croud,
Stand bellowing aloud,
For all that two Courts can afford ;
And 'tis very well known,
That for them what is done,
Is the same as if done for my Lord.

But I'm told, noble Peer,
Lest these Things should take Air,
And with Dirt all Mankind should upbraid ye,
That you try a new Way,
['Tis as safe I dare say]
And make them account with my Lady.

But indeed this won't do,
And the World will see through,
And your *Virtue* (I fear) will bespatter :
Then mind what I send,
For I'm so far your Friend,
That I'm sure you can't say that I flatter.

There's my good Lord of G---r
I'n't a Quarter come o'er,
And I fancy you'll find he wants Zeal ;
If he don't come plum in,
And vote through Thick and Thin,
Turn him our, and be made P---y S---l.

Don't slight this Advice,
Nor affect to be nice,

* Crowd. Here every intelligent Reader will immediately have
in his Thoughts eight or ten of the ablest Men and greatest Genius's
in this Kingdom ; such as H. V——, H. F——se, L——d
L——k, Mr. H——t, Mr. S——l S——s, Mr
B——tle, Mr. G——n, Sir J. R——t, &c. &c. &c

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L——k, Mr. H——t, Mr. S——l S——s, Mr
B——le, Mr. G——n, Sir J. R——t, &c. &c. &c.

Laugh at Oaths that obstruct your great End ;
 For an Oath's but a Joke,
 To one that has broke
 Through all Honour and Tyes with his Friends.

Go to C---t and P---m,
 You'll still go on, tell 'em,
 All honest Mens Hopes to defeat ;
 To crown your Disgrace
 They'd give you this Place,
 And your Character will be compleat.

An O D E,

Humbly inscrib'd to the Right Honourable
 W—— E—— of B——.

*Neque enim lex justior ulla,
 Quam necis artifices arte perire sua.
 Parcius junctas quatiunt fenestras
 Istibus crebris juvenes protervi :
 Nec tibi somnos adimunt : amatque
 Janua limen.*

Ec. Ec. Ec. Hor. Lib. 1. Od. xxv.

G R E A T E--- of B---- your Reign is o'er,
 The Tories trust your Word no more,
 The Whigs no longer fear ye ;
 Your Gates are seldom now unharr'd,
 No Crowds of Coaches fill your Yard,
 And scarce a Soul comes near ye.
 Few now aspire at your good Graces,
 Scarce any sue to you for Places,
 Or come with their Petition,

To tell how well they have deserv'd,
How long, how steadily they starv'd,
For you in Opposition.

Expect to see that Tribe no more,
Since all Mankind perceive that Pow'r
Is lodg'd in other Hands:
Sooner to C--t--s now they'll go,
Or ev'n [though that's excessive low]
To W--lm--t--n and S--s.

With your *obedient* Wife retire,
And sitting silent by the Fire,
A sullen *tête à tête*;
Think over all you've done or said,
And curse the Hour that you were made
Unprofitably Great.

With Vapours there, and Spleen o'ercast,
Reflect on all your Actions past,
With Sorrow and Contrition;
And there enjoy the Thoughts that rise
From disappointed Avarice,
From frustrated Ambition.

There soon you'll loudly, but in vain,
Of your deserting Friends complain,
That visit you no more:
But in this Country 'tis a Truth,
As known as that Love follows Youth,
That Friendship follows Pow'r.

Such is the Calm of your Retreat!
You through the Dregs of Life must sweat
Beneath this heavy Load;
And I'll attend you, as I've done,
Only to help Reflection on,
With now and then an Ode.

The RIDDLE EXPLAIN'D :

O R,

A certain late Extraordinary Promotion to a P——ge
accounted for.—— *Concors discordia* —— OVID.

TO some 'tis strange that equal Honours now
 Shou'd grace a *W*---'s and a *P* - -'s Brow !
 That **THEY**, who long with unrelenting Hate,
 At Heads of disagreeing Parties fate ;
 Who Wars continual, in *St. S*-----'s, wag'd,
 Led on the Hosts, and with such Heat engag'd ;
 That **THEY**, so widely diff'rent shou'd deserve,
 From the same *P*---- (whom but one seem'd to serve)
 The same Reward ! But, ah ! they little know
 The Wiles of *C*——-r——-s who can reason so !
 Believe me, Friends, the RIDDLE's soon explain'd :
 “ On Rival Schemes intent themselves they feign'd,
 “ Which others really were ; and by this Shew
 “ Of mutual Enmity, they wisely drew
 “ Both Sides into their Snares, of Both the Secrets
 “ knew ;
 “ Still Seeming Diff'rent, still in Fact the Same,
 “ Into Each Others Hands they play'd the Game ;
 “ The Self-same Ends pursu'd, by Various Means,
 “ **ONE** on the Stage, and **ONE** behind the Scenes.

A B A L L A D.

In Imitation of William and Margaret.

Address'd to the **** *

'T WAS at the Hour, when guiltless Care
Is lull'd in soft Repose;
When nothing wakes, save fell *Despair*!
Beset with cureless Woes.

Inviting Sleep, lo! *William* lay
The Down he vainly prest:
Honour, alas! had soar'd away,
And Shame had poison'd Rest!

B...t...ia, with that stern Regard
That conscious Worth puts on,
Before his frantick Eye appear'd,
And pierc'd him with a Groan!

Her Cheek had lost its rosy Bloom!
And languid roll'd her Eye!
This once cou'd brighten midnight Gloom!
That, shame the *Tyrian* Dye!

The Laurel-Wreath, by Glory's Hand,
Twin'd round her awful Brow,
As what her Grief and Rage disdain'd,
She rent in Fury now.

Away she hurl'd her boasted Shield,
Away her useless Spear:
What Joys to Slaves can Trophies yield?
What Pride the Pomp of War?

Behold the dire Effects (the cry'd)
Of *William's* perjur'd Troth!

Behold the Orphan, who rely'd
On a false Guardian's Oath!

How cou'd thou with a Lover's Zeal,
My widow'd Cause espouse,
Yet quit that Cause thou serv'd'st so well,
In scorn of all thy Vows?

How cou'dst thou swear, Wealth, Titles, Pow'r
Thy Candour wou'd disclaim?
Yet batter, in an evil Hour,
That Candour for a *Name*?

How cou'dst thou win my easy Heart
A Patriot to believe?
How cou'd I know, but by the Smart,
A Patriot wou'd deceive?

Bethink thee of thy broken Trust!
Thy *Vows* to me unpaid!
Thy Honour humbled in the Dust!
Thy Country's Weal betray'd!

For this may all my Vengeance fall
On thy devoted Head!
Living, be thou the Scorn of all!
The Curse of all when dead!

This said, while Thunder round her broke,
She vanish'd into Air;
And *William's* Horror, while she spoke,
Was follow'd by Despair.

The STATESMAN.

Quem virum, aut heroa, lyra, vel acri

Tibia sumes celebrare, Clio?

Quem deum? &c.

HOR. Lib. I. Ode 12.

PART I.

WHAT Statesman, what Hero, what King,
 Whose Name thro' the Island is spread,
 Will you chuse, O my *Clio*, to sing,
 Of all the great Living or Dead?

Go, my Muse, from this Place to *Japan*,
 In search of a Topic for Rhyme:
 The Great E.... of B..... is the Man,
 Who deserves to employ your whole Time.

But, howe'er, as the Subject is nice,
 And perhaps you're unfurnish'd with Matter;
 May it please you to take my Advice,
 That you mayn't be suspected to flatter.

When you touch on his L—— p's high Birth,
 Speak *Latin*, as if you were tiply;
 Say, we are all Sons of the Earth,
Es genus non fecimus ipsi.

Proclaim him as rich as a *Jew*;
 Yet attempt not to reckon his Bounties.
 You may say, he is married; that's true:
 Yet speak not a Word of his C—— s.

Leave a Blank here and there in each Page,
 To enrol the fair Deeds of his Youth!
 When you mention the Acts of his Age,
 Leave a Blank for his Honour and Truth!

Say, he made a great M—— h change Hands :
He spake----and the Minister fell.

Say, he made a great Statesman of S—— s ;
(O that he had taught him to spell !)

Then enlarge on his Cunning and Wit :

Say, how he harangu'd at the *Fountain* :
Say, how the old Patriots were bir,
And a Mouse was produc'd by a Mountain.

Then say, how he mark'd the New Year,
By encreasing our Taxes and Socks :

Then say, how he chang'd to a P——r,
Fit Companion for E—— be and F—— x.

A New ODE.

*Quis multa gracilis te Puer in rosa
Perfusus liquidis urget odoribus,
Grato, Pyrrha, sub antro? HOR. Od. 5. Lib. 1.*

WHAT (good L--- d B----) prim Patriot now;
With courtly Graces wooes thee ?
And from St. *Stephen's* C—— I to
The H—— of L---ds pursues thee ?

How gay and debonair you're grown ?
How pleas'd with what is past !
Your Title has your Judgment shewn,
And Choice of Friends your Taste.

With sparkling Wit to entertain,
Yourself and your good C—— fs,
You've hit on sweet-hipp'd H---y V---e,
And high-bred H---y F-----fe.

But, to direct th' Affairs of State,
 What Genius's you've taken !
 Their Talents like their Virtues great !
 Or all the World's mistaken !

The Task was something hard, 'tis true,
 Which you had on your Hands,
 So, to please P——— and People too,
 You wisely pitch'd on S——.

O *Britain* ! never any thing
 Could so exactly hit you !
 His Mein and Manners charm'd the -----,
 His Parts amaz'd the City.

But to make all Things of a Piece,
 And end as you begun ;
 To find a Genius such as his !
 What was there to be done ?

O where----where were they to be found !
 Such Stars but rare appear !
 Dart not their Rays on ev'ry Ground,
 Gild ev'ry Hemisphere.

But you, with astronemick Eyes,
 Not *Tycho Brahe*'s more true,
 From far spy'd some bright Orbs arise !
 And brought them to our View.

Sir *J---n*'s clear Head, and Sense profound,
 Blaz'd u in P——— ;
G-----n, for Eloquence renown'd,
 To grace the C—— you sent.

To these congenial Souls you join'd
 Some more, as choic'd and proper,
 Bright *B---tle* ! Darling of Mankind !
 Good *L-----k* and sage *H ---r*.

Such Virtue and such Wisdom shone,
 In ev'ry chosen Spirit !
 All Men at least this Truth must own,
 Your nice Regard to Merit !

What Pray'rs and Praise to you belong,
 For this blest Reformation !
 Thou Joy of ev'ry Heart and Tongue !
 Thou Saviour of the Nation !

O *W---le*, *W---le*, blush for Shame,
 With all your Tools around you !
 Does not each glorious Patriot Name
 Quite dazzle and confound you ?

Had you sought out this Patriot Race,
 Triumphant still you'd been ;
 By only putting them in Place,
 You had yourself kept in.

The Patriots are Come ;

OR, A

Doctor for a Crazy Constitution.

A New BALLAD.

To the Tune of, *Derry down.*

O H! *E---g---d* attend while thy Fate I deplore,
 Rehearsing the Schemes and the Conduct of Pow'r ;
 And since only of those who have Power, I sing ;
 I'm sure none can think I hint at the ———

Derry down.

From the time his S---n made him Old Robin depose,
 All the Power of a ---- he was well known to lose,
 But of all, but the Name and the Badges bereft,
 Like Old Women his Paraphernalia are left.

Derry down.

To tell how he shook in St. J---s's for fear,
 When first these New M-----rs bully'd him there,
 Makes my blood boil with Rage to reflect what a Thing
 They made of a Man we obey as a -----

Derry down.

Whom they pleas'd they put in, whom they pleas'd
 they put out,
 And just like a Top they all lash'd him about;
 Whilst he like a Top, with a murmuring Noise,
 Seem'd to grumble, but turn'd to these rude lashing
 Boys.

Derry down.

At last C---- arriving thus spoke to his Grief,
 If you'll make me your Doctor, I'll bring you Relief;
 You see to your Closet familiar I come,
 And seem, like my Wife, in the Circle at home.

Derry down.

Quoth the-----, my Good L----d, perhaps you've
 been told,
 'That I us'd to abuse you a little of Old;
 But now bring who you will, and eke turn away,
 Let me and my Money and W--- d---n stay.

Derry down.

For you and W---d ---n, I freely consent,
 But as for your Money, I must have it spent
 I have promis'd your S---n (nay no Frowns) shall have
 some,

Nor think 'tis for nothing we Patriots are come.

Derry down.

But howe'er little ——— since I find you are so good,
Thus stooping below your high Courage and Blood:
Put yourself in my Hands, and I'll do what I can,
To make you look yet like a ——— and a Man.

Derry down.

At the A——l——y and your T——y Board,
To save one single Man, you shan't say a Word,
For by G——d all your Rubbish from both you shall
thoot.

W——p——'s Cyphers entire, and G——y's to boot.

Derry down.

And to guard P——es Ears as all S——f——n take Care,
So as long as yours are, not one Man shall come near;
For of all your OH Crew, we leave only those
Who we know never dare to say boh! to a Goose.

Derry down.

So your Friend booby G——n I'll e'en let you keep,
Awake he can't hurt, and is still half asleep;
Nor ever was dangerous, but to Womankind,
And his Body's as Impotent now as his Mind.

Derry down.

There's another C——t Booby at once hot and dull;
Your pious Pimp S—— is a mean H——r Fool,
For your Card-play at Night he too shall remain,
With virtuous and sober, and wife D——ne.

Derry down.

And for your C——t Nol—— who can't write or read,
As of such Tuld Cyphers all C——ts stand in need;
Who like P——t Swisses vote and fight for their
P. y :

They're as good as a new Set, to cry yea and nay.

Derry down.

Tho' N—— is as false as he's silly I know,
By betraying Old Robin to me long ago;

As well as all those who employ'd him before,
Yet I'll leave him in Place, but I'll leave him no Pow'r.

Derry down.

For granting his Heart is as black as his Hat,
With no more Truth in This, than there's Sense be-
neath That;

Yet as he's a C——d he'll shake when I frown;
You call'd him once R——l, I'll treat him like one.

Derry down.

And since his Estate at E——n's he'll spend,
And beggar himself without making a Friend;
So whilst the extravagant F——l has a Scuse,
As his Brains I can't fear, his Fortune I'll use.

Derry down.

And as Miser H—— with all C——rs will draw,
He too may remain, but shall stick to his Law;
For of F——gn Affairs, when he talks like a Fool,
I'll laugh in his Face, and cry go to School.

Derry down.

The Countess of W——n, like your Old Nurse,
I'll trust at the T——y not with its Purse,
For nothing by her I'm resolv'd shall be done,
She shall sit at that Board, as you sit on the T——e.

Derry down.

Perhaps now you expect that I shou'd begin
To tell you the Men I design to bring in;
But we've not yet determin'd on all their Demands,
And you'll know soon enough when they come to kiss
H——ds.

Derry down.

All that Weather cock P——y shall ask we must
grant,

For to make him a N——e, for nothing, I want;
And to cheat such a Man demands all my Arts,
For tho' he's a Fool, he's a Fool with great Parts.

Derry down.

And as popular *Clodius*, the P———y of *Rome*,
 From a Noble, for 'twas did Plebeian become :
 So this *Clodius* to be a Patrician shall chuse,
 Till what one got by changing, the other shall lose.

Derry down.

Thus flatter'd, and courted, and gaz'd at by all,
 Like *Phaeton* rais'd for a Day, he shall fall,
 Put the World in a Flame, and shew he did strive
 To get *Reins* in his Hand, tho' 'tis plain he can't drive.

Derry down.

For your F———gn Affairs, how'er they turn out,
 At least I'll take care you shall make a great Rout ;
 Then cock your great Hat, strut, bounce, and look
 bluff,
 For tho' kick'd and cuff'd here, you shall there kick and
 cuff.

Derry down.

That W——p——e did nothing they all used to say,
 So I'll do enough, but I'll make the Dogs pay :
 Great Fl———s I'll provide, great A———mies engage,
 Whate'er Debts we make, or whate'er Wars we wage.

Derry down.

With Cordials like these, the M———s new Guest
 Reviv'd his sunk Spirits, and gladden'd his Breast,
 Till in Raptures he cry'd, my dear L———d you
 shall do

Whatever you will, give me T———ps to r———w.

Derry down.

But, Oh, my dear Country! since this is thy State,
 Who is there that loves thee, but weeps at thy Fate ;
 Since in changing thy Masters thou'rt just like old
Rome.

With Faction, Opp———sion and Sl———v——y thy Doom.

Derry down.

For tho' you have made that Rogue *W*——e retire,
 You're out of the Frying-pan into the Fire ;
 But since to the Protestant Line I'm a Friend,
 I tremble to think where these Ch——ges may end.
Derry down.

A PICTURE,

Humbly inscrib'd to him who may most
 properly be call'd an *Original*.

Ab Avaritia & mala Ambitione laborat.

HOR. SAT.

—— *Omnes*

Vicini oderunt noti, pueri atque puella.

Miraris ?

Ibid.

Heu patiar telis vulnera facta meis.

OVID. in Ep.

LIVES there a Man for no one Merit fam'd,
 For ev'ry Vice and ev'ry Weakness blam'd,
 Without Contempt or Censure never nam'd;
 Whom none esteem, love, like, or will defend,
 Without a Follow'r, Advocate, or Friend;
 Who never is sincere, yet can't deceive,
 As none his Word or branded Vows believe;
 Who by long Use has brought his spongy Eye,
 Like blub'ring Women, when he lifts, to cry,
 The certain Mark he's telling you a Lye:
 Who foolishly believing all Mankind,
 Because on some he had impos'd, were blind;
 Has shown the World, by stretching the Deceit,
 He's both a private and a publick Cheat:

E

Pleading the Statute, to avoid a Debt,
 The strictest Promise feigning to forget;
 And by a Friend entrusted, to their Cost,
 Pretending Deeds, which he had hid, were lost:
 Who long a verbal Rebel to the State,
 Teaching a Mob all Government to hate,
 At once became an Advocate for Pow'r,
 Swooping from those he'd injur'd to implore
 Favours, which never to accept, he swore.
 'Till, hoping by his coarse, transparent Arts,
 To reign at Court, and in the People's Hearts,
 By one rewarded, by the other priz'd,
 He is by both detested and despis'd:
 With the Reproaches of all Parties stunn'd,
 For the Performance of his Perjuries dunn'd;
 And now by Men of all Denominations shunn'd.
 Mankind convinc'd, that in his Height of Fame,
 Fraud was his Practice, Int'rest all his Aim:
 His ev'ry Art, and ev'ry Thought apply'd,
 To feed his Avarice and swell his Pride:
 Thus his short Dream of vanish'd Grandeur o'er,
 Despoil'd of Reputation, stript of Pow'r,
 He proves himself the only Dupe at last;
 For tho' unhang'd, for Transportation cast,
 In an enobled Colony he's plac'd,
 To drudge for those by whom he's thus disgrac'd;
 And with an *Alias* to his alter'd Name,
 Like pillory'd Forgers, only rais'd to Shame.
 If of this Picture all the Lines are true,
 The Name at Bottom none can want to view;
 For tho' there's *one* such Man, there can't be *two*.

Another PICTURE.

PEACE and the Man I sing, the first who brought
 The Fleet of *England*, and her Trade to Nought;
 From one Expedient to another toss'd,
 In each Attempt by Land and Ocean cross'd,
 Who, into great and various Perils cast,
 Safely arriv'd on O--f---'s Shore at last.

Say Goddess, say, or Witch or Wizard tell,
 Inspire me Heav'n, or O! assist me Hell,
 O! lend your Aid the wond'rous Man to draw,
 As strange a Monster as the World e'er saw,
 Who, without Worth, above all Worth could rise,
 Who, without Wisdom, could defeat the Wise;
 Who, tho' a Beggar's Brat, could drag along
 His Slave, in Golden Chains, and bind the Strong:
 Ignoble he could noble make the Clown,
 And weak himself could pull the Mighty down.

Rais'd from the Dung, by his omnific Pow'r,
 The filthiest Weed becomes a gaudy Flow'r:
 Strangers to Virtue, to all Arts unknown,
 Whom *Tyburn* had begun to call her own,
 Uprise beneath his undiscerning Eye,
 To stand with Princes, and with Nobles vie.
 On Beauty's Breast repos'd, on Roses laid,
 The Sense indulging with the venal Maid,
 Or now intent on Frolic, Song, and Dance,
 Exhilarated with the Wine of *Franco*;
 Aukward in Joy, the *Russians* pass their Hours,
 Basking (whom Nature meant for Sties) in Bow'rs.

O! *Chesterfield*, for *England*'s Honour horn,
 Whom Wit, whom Art, and public Faith, adorn,
 Upon whose Breast, with undiminish'd Rays,
 One Star of *Edward* yet is seen to blaze;

O! thou, who ne'er wilt give thy Glories up,
 Thou who hast still refrain'd from *Circe's* Cup,
 Deign, as before thou'lt been, once more to be,
 The Pride, the Guardian, of my Song and me:
 Sweet then the Verse shall flow, and *Attic* Fire
 Glow in each Line Line, and ev'ry Muse inspire.

A Lamentable CASE.

Submitted to the Bath Physicians.

YE fam'd Physicians of this Place,
 Hear *Strephon's* and poor *Chloe's* Case,
 Nor think that I am joking;
 When she wou'd, he can not comply,
 When he wou'd drink, she's not a-dry;
 And is not this provoking?

At Night, when *Strephon* comes to rest,
Chloe receives him on her Breast,
 With fondly-folding Arms:
 Down, down he hangs his drooping Head,
 Falls fast asleep, and lies as dead,
 Neglecting all her Charms.

Reviving when the Morn returns,
 With rising Flames young *Strephon* burns,
 And fain, wou'd fain be doing:
 But *Chloe* now, asleep or sick,
 Has no great Relish for the Trick,
 And sadly baulks his Wooing.

O cruel and disast'rous Case,
 When in the critical Embrace
 That only One is burning!

Dear Doctors, set this Matter right,
Give *Strephon* Spirits over Night,
Or *Chloe* in the Morning.

A Right Honourable DIALOGUE.

C. **T**O the *Earl* says the *Countess*, What makes you
so dull ?

E. Because for your *Ladyship* I've play'd the Fool.

Co. For *Me*, do you say, Sir ? Your *Lordship* you mean.

E. Ay,---Curse the damn'd *Title*, 'tis That gives me
Spleen.

Co. You've no Sense of *Honour*, no Notions of *Glory*.

E. Yours are--*Polly W--s* should not *Rank* before ye.
But more *Honour* w'd had, been *Happier* still,
Had You been plain *Madam*, and I been plain *Will*.

SCOTCH Taste on VISTA'S.

OLD *J--y*, to shew a most elegant Taste
In improving his Gardens, purloin'd from the
Waste ;

And order'd his Gard'ner to open his Views,
By cutting a couple of grand Avenues.

With secret Delight he saw the first View end

In his favourite Prospect, a Church ——— that is ruin'd :

But what should the next to his Lordship exhibit ?

'Twas the terrible Sight of a Rogue and a Gibber.

A View so ungrateful then taught him to muse on,

Full many a *C--p--ll* had dy'd with his Shoes on.

All amaz'd and agast, at the ominous Scene,

He order'd it strait to be shut up again,

With a Clump of *Scotch* Firs by Way of a Screen.

BROGLIO'S Breeches.

WHEN eist the gallant *Koningsfegg*
 (As in the News we've read from *Hague*)
 Had storm'd poor *Broglia's* Quarters ;
 A fierce *Hussar* seiz'd on the Chief,
 As he was saving, with his Life,
 His Breeches and his Garters.
 Disturbing a Marshal of *France* in the Night,
 Is not *à-la-mode à Paris*, or polite.
 Who're you ? quoth th' *Hussar*, Monsieur shook,
 Said I'm his Excellency's Cook ;
 No Follower of the Drum.
Hounds-foot ! replies the *German* quick,
 Begone with that ; so with a Kick
 Salutes the Marshal's Bum.
 Disgraceful ! of War how capricious the Chance !
 A *German Hussar* kicks a Marshal of *France*.
 But *Broglia*, say, wou'dst not be glad,
 In spite of all thy *Gasconade*,
 Sans Breeches or a Rag,
 To be as fairly now dismiss'd,
 By such another kicking Jest,
 From young *Lorrain* and *Prague* ?
 Since thus one is drove to so piteous a Taking.
 Who the De'il would again go an Emperor-making ?

*A Receipt to make a P---R, occasioned by the Reports
 of the late Pr---m---t---n.*

TAKE a Man who by Nature's a true Son of Earth,
 By Rapine enrich'd, tho' a Beggar by Birth ;
 Of Genius the lowest, ill bred and obscene,
 Of Morals most wicked, most nasty in Mien ;

By none ever trusted, yet ever employ'd,
 In Blunders most fertile, of Merit quite void;
 A Scold in the Senate, abroad a Buffoon;
 The Scorn and the Jest of all C---ts but his own;
 A Slave to that Wealth which ne'er made him a Friend,
 And proud of that Cunning which ne'er gain'd an End;
 A Dupe in each Tr---y, a *Swiss* in each Vote,
 In Manners and Form a compleat *Hottentot*:
 Such a one could you find, of all Men I'd commend him,
 But before let the Curse of each *Br---t---n* attend him.
 Thus filly prepar'd, add the Grace of a Th---ne,
 The Folly of M---n---chs, and Screen of a Cr---n:
 Take a Pr---ce for this purpose without Ears or Eyes,
 And a long Parchment P---t---t stuff brimful of Lies;
 These mingled together, a *Fiat* shall pass,
 And a Thing strut a P---r, that before was an Ass.
Probatum est.

— *Populus me sibilat, at mihi plaudo.* HOR.

S SHALL these mad Efforts of indignant Foes,
 My Name to blacken, break my Mind's Repose?
 What's the base murmur'ing of the People's Breath
 To the high Sounds of L---d and E---l of B---?
 In their fierce *Patriot* Fits they roar and rave,
 And call me *Hypocrite*, and call me *Knave*.
 But I who P-----y was, am P-----y still;
 In *Form* though varying, fixt in *Principle*;
 The Principle from which I ne'er did swerve,
 Has ever urg'd me my dear *Self* to serve.
 With Titles honour'd, with huge Wealth increast,
 My Pride I pamper, and my Av'rice feast:
 Let Patriots for themselves unskill'd to crave,
 For Sake of *Virtue*, Sake of *Justice* stave:
 High-joy'd I smile, when they frown on my Ways;
 And while they hiss me, clap to my own Praise.

AN EPIGRAM.

SIR *Thomas of Wentworth*, inflexibly good,
 Had long *Ministerial Power* withstood:
 At length thro' *Ambition*, an *Earl* he was made;
 So first lost his *Friends*, and then lost his *Head*.
 O P———! consider, like his thy *Condition*,
 How great and how glorious thy long *Opposition*:
 Thou art now made an *Earl*, have a Care of thy *Head*,
 Our *Pym*s and our *Hampdens* are not all of 'em dead.

The PIN. An EPIGRAM.


AS Nature H——y's Clay was blending,
 Uncertain what her Work should end in,
 Whether in Female or in Male,
 A Pin dropp'd in, and turn'd the Scale.

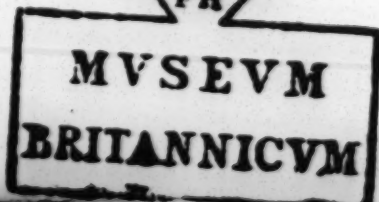
PHYSICK and CARDS.

PHYSICK each Morn is T——t's Care,
 Each Night she plays a Pool?
 One helps her to an easy Chair,
 The other to a Stool.

An EPIGRAM, dropt in a Glass at a certain Ballot.

THY Horse, like thee, does things by Halves;
 Thou, through Irresolution,
 Hurt'st Friends and Foes, thyself and me,
 The K——g and Constitution.

F I  S.



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